



# **ASSEMBLY HANDBOOK**

BY

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## PREFACE

The democratic changes in the constitution of India impose heavy responsibilities on all the citizens, whether they are legislators, publicists, officials or students. The present work is intended to help them in equipping themselves with the required knowledge with special reference to legislatures whose number and strength have of late enormously increased. Efforts have also been made to bring together in this handy volume other necessary information in its proper historical setting in order to save the reader from perusing and assimilating the vast literature on the subject. The work is exclusively descriptive in nature and no criticisms have been attempted or suggestions offered. The material has been derived mostly from government publications, standard books on Indian constitution and parliamentary procedure, and therefore no originality is claimed. The chapters on Parliamentary procedure have been based on the relevant provisions of the Government of India Act 1935, the existing rules of procedure and a careful study of the actual working of the various provincial councils and the central legislature. The rulings quoted need hardly be taken as final, although most of them may be taken as established practices.

Khyaliganj,  
Old Katchery Road  
LUCKNOW  
May 2 1946

R. R. SAKSENA



## Explanations and Abbreviations.

'The Act' means the Government of India Act 1935, unless there is something repugnant in the subject or context

'Chair' means president or speaker or any other person presiding over the meeting of the house

Governor-General or 'Governor' means the Governor-General in case of the Central or Federal Government, and Governor in case of a Provincial Government

'Legislative Assembly' means Legislative Assembly of India as constituted under the Government of India Act 1919. But Legislative Assembly with reference to the new constitution or a province means a Provincial Legislative Assembly as constituted under the Government of India Act 1925.

L. A. D.—Legislative Assembly Debates i. e. Official Report of the Indian Legislative Assembly as constituted under the Government of India Act 1919.

U. P. L. C. P.—United Provinces Legislative Council Proceedings i. e. Official Report of the United Provinces Legislative Council as constituted under the Government of India Act, 1919

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# PART I

## CONSTITUTIONAL

### CHAPTER I

#### INTRODUCTION

*"Unless there is an equitable adjustment in a state of rights, offices and functions, so that the executive may have sufficient powers, the senate sufficient authority, and the people sufficient liberty, the framework of government cannot remain stable and free from violent change"—Cicero*

#### 1. Emergence of the State.

"A man who is not a member of the society is either a beast or a god" is the well known saying of Aristotle. Man is by nature a social and political being. The need for order and protection brought the primitive men together and no aggregation of people could long exist without some form of association, of communication and of more or less co-operation. In those parts of the earth where population became numerous such conditions were particularly necessary. Increasing contact of man with man compelled some sort of regulation concerning mutual relations, even if at first it were nothing more than the enforced subjection of the weak by the strong, or the combination of several against a common enemy. As economic life advanced, more definite and authoritative regulations concerning things, as well as persons, were needed. Thus arose the crude beginnings of law and government. Further progress in civilisation demanded more definite and powerful organisation with



further subdivisions of governmental duties and increasing political consciousness, in other words; the modern state.

## 2. The Government.

The modern state, therefore, is a gradual and natural historic evolution. It is a slow and continuous development of human society, out of a grossly imperfect beginning though crude yet improving towards a perfect and universal organisation of mankind. The state, as such, is based more on reason and general will, than on fear and force. Government is the instrument or machinery of the state. It is the organ through which the will of the sovereign is enforced. Yet it is a part of the state. All the citizens of the political community constitute the state, a much smaller number, though in modern states a fair proportion, comprise the government. It includes all those persons who are occupied in administering the 'will of the state'—the sum total of all the legislative, executive and judicial bodies in the body politic. In its broader sense the government may be defined as the "sum total of those organisations that exercise or may exercise the sovereign power of the state." A state cannot exist only as a government, and a government exists only as the organisation of the state. While the term "state" is an abstract term and may be conceived apart from the existence of any actual state, since all states are alike in essence, government is distinctly a concrete term and its forms vary, being determined in each case by the political conditions in each state. Government is thus the existing adjustment between the state and its individuals, and the means by which inter-state relations are maintained. It is the machinery through which the purposes of the state are formulated and executed.

### 3. The Constitution.

The definite set of customs, rules and regulations that relate to the functions, working and organisation of the government are said to comprise its constitution. In other words the constitution is that body of rules or laws, written or unwritten which determine the organisation of the government, the distribution of powers to the various organs of the government, and the general principles on which these powers are to be exercised. The object of the constitution is to limit the arbitrary power of the executive or to guarantee certain rights to the governed. In short it attempts to determine the exact position of the sovereign power, which is the ultimate authority in a state.

The underlying principles are the same in all the constitutions but the external aspects of the process of constitutional development vary, widely in different states. The British constitution is a product of age-long evolution and has never been embodied in a single instrument. In fact much of the English constitution has never been put into documentary form, but it consists of long recognised customs, traditions and precedents. In other countries the process of constitution-making has been more discontinuous, more deliberate and often more violent. Monarchies often have been obliged because of revolution on the part of their subjects, to grant and put into effect complete constitutions. In other instances people have succeeded in forcing the calling of some sort of a constituent assembly empowered to form a constitution, and still in other cases people have gained the right on their own initiative to summon such a constituent assembly. The American and German constitutions were framed by conventions consisting of delegates representing the several states and the former were ratified by

specially elected convention in each 'state of United States of America.' Virtually all written constitutions have come into being through somewhat similar process. A constituent assembly of some sort draws them up, and they are put into effect by this body or by a process of ratification in which the people directly or indirectly participate.

#### 4. Separation of Powers.

The constitution defines various organs of the government, for a government like an individual requires various organ to discharge its duties. The body can hardly work efficiently if it has no hands, no feet or eyes, or ears. Similarly the government can hardly function properly unless it has different organisations to look after each activity of the state. These are usually three, the legislative, the executive and the judicial.

The legislature is concerned in the making of law, executive officers in the carrying out of law, and the judiciary, in deciding as to the application of law to particular cases. While in theory these functions seem to be separate, in actual practice no clear-cut distinction is possible. Executive officers must exercise wide discretionary powers in administering law, and must deal with questions concerning which no law exists, and judges in their decisions often create new law as well as administer existing law. All the same it is highly desirable that these three parts of the government must be kept as separate as possible and that each of these departments should be limited to its own sphere of action and within that sphere should be independent and supreme.

#### 5. The Legislature.

In this book we are concerned more with the legislative organ of the government. It would therefore

be better to understand its full implications in respect to its origin and law making powers. The idea of deliberately creating law, the most important function of modern legislature, is comparatively recent. At first magistrates and priests alone could create law. Representing the power of God or the majesty of the state, father and king or, later, priest or archon, were law givers. In the Roman Empire the emperor was the source of all law. When national states, arose, their kings claimed the same prerogative, and in some states even today in legal phraseology at least, laws are issued by the crown. At times the assemblies of the learned and the noble, whose consent and support was needed on important questions, gradually established themselves as part of the law-making body, and by various methods secured the right to initiate, as well as to endorse, new laws. The assemblies in Greece, and in Rome and the early Teutonic moots represented this state. Finally, the system of representation, begun in England, furnished a device that enabled the growing idea of popular sovereignty to manifest itself effectively, and, in modern states, legislation is consequently controlled by popular legislatures.

The powers of the legislatures in respect of making law are being widened every day. Custom and equity are being replaced by definite enactments; judicial decisions are limited by codification, and scientific commentary does little except to discuss cases. While other sources are no doubt present, they tend increasingly to be swallowed up in legislation.

Legislatures are concerned with deliberations and discussions; with the balancing of policies and the compromising of collective motives. It is therefore essential that they include a large number of persons, represent all important sections, interests and classes.

and derive their authority ultimately from the masses of the people. In addition to their large size, the modern legislatures secure further deliberation and caution by a separation into two houses, forming what is called a bicameral legislature. This system originated rather accidentally in England and is now adopted in almost all the countries of the world.

The functions of legislatures, making due allowance for difference in detail and in scope of authority, may be classified as follows. —

1 They formulate the law of the land, removing obsolete provisions and adapting legislation to the changing conditions of modern life

2 They control the finances of the state, determining the method of raising money, the amount to be raised and the purpose of its expenditure

3 They are gradually extending their control over the international relations of the state, and by means of their power over the ministry or over finances, act as a check on them

4 They exercise many powers not purely legislative. In deciding contested elections, trying their own members, or impeaching other officials, they exercise judicial powers. In appointing or sharing in the appointment of officials, regulating minor executive offices, appointing commissions and passing private legislation, they enter largely into administration.

It may however be noted that the former confidence in the legislatures is somewhat declining. On the one hand, commissions of experts are being created to deal with problems requiring more specific knowledge than a large body of legislators is likely to possess. On the other hand, the people by initiative, referendum, and by the conventions for the creation of constitutions, are extending their authority over

the field of legislation Side by side we see the rise of popular dictators in place of popular legislatures.

Such legislatures, although rudimentary in nature, were not uncommon even in ancient days. The Greeks had the city states. The '*Ecclesia*', was their assembly of the whole people. The council of five hundred (*Boule*) took the initiative in every '*Decree*'. It was also competent to a member of the '*Ecclesia*' to direct the council to prepare and bring forward a decree on a subject. The '*Ecclesia*' before coming to a decision could call for expert advice or for the opinion of executive departments. Voting took place ordinarily by show of hands, but if the division was close, a count could be taken.

In India too, as old as the Vedic period, we had *Sabha* or *Samiti* similar to modern legislatures. '*Vid-thi*' is another term often used in the Rigveda. It has been variously interpreted as an 'order', a secular or religious assembly or as a gathering for war. Nothing is known about the composition and constituents of these assemblies. They probably consisted of all the free Aryas or of upper classes alone. The king attended them. Nor are their functions and the scope of their activities clear. From a hymn in the last *Mandala* of the Rigveda, it appears that the assembly sometimes acted as a court of justice in matters like disputes about land, cheating, at play, recovery of debt, inheritance, theft, assault and murder. Besides justice, the most important function of these *Sabhas* seems to be that of general deliberation. It is difficult to throw definite light on the subject but from certain references in the Atharva Veda it appears that the Assembly discussed war, peace, finance and general well-being of the state.

## CHAPTER II

# GROWTH OF THE INDIAN CONSTITUTION

*“ Like an anchor of a ship, that is always at sea  
and never learns to swim ”*

### 1. Pre-Mutiny Administration.

The growth of the Indian constitution has been influenced to a very great extent by the historical conditions surrounding it. As Seely puts it, “History without Political Science has no fruit, Political Science without history has no root.” The one acts and reacts upon the other. The British came in India as a trading body hence their early administration was really an off-shoot of the East India Company's Commercial activities. The company which started by the Charter of 1600 remained purely a trading corporation till 1764. The successive charters renewed or amplified the same, conferred on the trading corporation monopolies of trade in the East and for that purpose authorised the acquisition of territories, their fortification and defence by military levies.” The company exercised its power through the general Court of Proprietors and the Court of Directors in England and in India the three settlements at Bombay, Madras and Calcutta were each governed by a president and a council of 10 or 15 members who were the leading commercial servants of the company. All the three settlements were independent of each other in India and there was no central government.

In the midst of “the political chaos in India in the 18th century the company pushed its fortunes vigorously and ultimately became a territorial power.” In

1757 the Battle of Plassey made the British the virtual masters of the richest Province in India and transferred the main activities of the company from the Madras to Calcutta. The mastery became complete when in 1765 on behalf of the company, Robert Clive obtained from the Emperor at Delhi, the Dewani of the rich and fertile territories of Bengal and Bihar and Orissa. Benares and Salsette fell later. But on account of misrule and oppression inherent to the rule of a commercialised body, the people of England discovered that commercial and administrative business cannot go hand in hand so there was a move to bifurcate the functions. This led to the passing of the Regulating Act of 1773 "for the better management of the affairs of the East India Company as well in India as in Europe". The act provided the nomination by Crown of a Governor-General and four councillors to administer the Presidency of Fort William. The Madras and Bombay Presidencies continued to be governed by a president and a council but they were made subordinate to the Governor-General. They were to communicate all important matters to the Governor-General and were forbidden to wage war or make treaties without his previous consent, although they could make laws for their provinces. Thus the Board of Directors of the Company was left in charge only of the commercial and financial matters leaving the legislative and administrative work in the hands of the Governor-General in council. This developed a system of double government, the Governor-General administering the company's possessions, and the Board of Directors managing commercial and financial matters. The importance of this act in the constitutional history of India lays in the fact that it proclaimed for the first time "the trusteeship of Great Britain for India with a view to the better Government."



of her people and marks the beginning of direct interference by Parliament in Indian affairs

But this system of dual government could not last long as there was constant friction between the commercial and civil authorities. It was substituted therefore by Pitts' India Act 1834 which provided that the Governor-General was to be appointed by the Court of Directors of the company instead of by the Crown. The act established in London a Board of Control to represent the Crown which was to superintend, direct and control all acts, operations and concerns which in any sense related to the civil or military government or revenue of the Indian possessions. This Board was composed of several Privy Councillors with a president who eventually became the Secretary of State for India and it exercised the supreme power to superintend the legislation in India.

With more territorial expansion the commercial activities were further cut short. The charter granted in 1793, by which it had been allowed the monopoly of Eastern trade for twenty years expired in 1813. When the question of the renewal of the charter came for consideration, the British public insisted that the trade should be thrown open to all. The company, therefore, lost all trade monopolies except in China. The Charter Act of 1833 withdrew even this monopoly and closed the company's commercial business for good. Henceforth the company became purely political and administrative body, "holding its territories in trust for the Crown". The Act of 1833 raised the Governor-General of Bengal to the position of the Governor-General of India and the direction of whole of the Government was placed in his hand. This was the high watermark of centralisation in legislative, administrative as well as financial affairs. It also gave India her first judicatory legislature.

To the body of Governor-General's Council, for the first time, was added a fourth member for legislative purposes only. It was empowered to legislate on all matters except certain important subjects. But at the same time the Governors in Council of Madras and Bombay were deprived of their law making power and they had to send the draft of necessary legislation for the approval of the Governor-General in Council, if there was need for it.

The Charter Act of 1853 is a land-mark in the constitutional History of India. It established the first Legislative Council as distinguished from the Governor-General's Executive Council. In addition to the Governor-General and four members of his executive council and the commander-in-chief, six special members, the chief judge and one puisne judge and 4 representatives of the provinces of Madras, Bombay, Bengal and North-West Province were added for legislative purposes alone. The sittings of the Legislative Council composed of all the 12 members were made public and the proceedings began to be regularly published.

## 2. Development of the Indian Legislatures

The discontent "against the policy of annexation", and other causes resulted in the Indian mutiny of 1857 and public opinion in England expressed its disapproval of a commercial company administering a vast empire and in response to its wishes the Government of India was transferred to the crown. In 1858, therefore, the "Act for the better Government of India" was passed. It transferred the control of affairs of the East India Company from the Board of control and the Court of Directors to the Secretary of State for India, who was to be responsible to Parliament acting in concert, in certain cases, with a

Council. This council was to consist of 15 members and except in some unimportant matters in which the council's advice was binding on the Secretary of State, the Council remained merely an advisory body. The Secretary of State was to submit annually the audited accounts of revenue and expenditure of India accompanied by a statement of moral and material condition and progress of the country. It was also laid down that no revenue of the Government of India were to be applied to defray expenses of any military operation beyond the external frontiers of British India without the consent of the Parliament. The Act, however, did not make any important change in the administration of India. The proclamation of the Queen which followed referred to Lord Canning as the "First Viceroy and Governor-General of India," which was continued for the succeeding occupants of that office.

The subsequent Parliament Act of 1861 was important in many respects. The legislature created by the Act of 1853 was preponderated by Bengal authorities and the huge extent of the territory for which a single council legislated made it impossible for matters to be handled with adequate information and experience. So the Indian Councils Act of 1861 provided for the creation of Provincial legislatures.

Thus legislatures were constituted in Madras and Bombay in 1861, in Bengal in 1862, in North-West Province in 1886 and in the Punjab in 1897 and in the Eastern Bengal and Assam in 1905. The local Legislatures were to consist of four to eight members in addition to the advocate-general of the province, of whom half were to be non-officials nominated by the Governors. But there were rigid restrictions placed upon the powers of these councils. Before 1833 the law enacted by these councils was in itself

complete, but from 1861 the previous sanction of the Governor-General in Council was made requisite to introduce certain measures and all acts of the local legislatures required the assent of the Governor-General. They were also not authorised to legislate on subjects like taxation, currency, post office etc. The Governor-General thus became the head of all legislative authority in British India.

In the Governor-General's Legislative Council the number of additional members in addition to the members of the council were to be not less than 6 and not more than 12. "They were to be nominated for two years each, and half of them were always Indians. They could make laws for all persons, all courts and all places and things in British India. Private members were not allowed to introduce bills except with the previous sanction of the Governor-General. The Governor-General's assent was necessary for all legislations." The Crown through Secretary of State for India could disallow any piece of legislation.

But the establishment of universities and the Indian National Congress led to the demand for some more political concession. As a result of this the Indian Councils Act of 1892 was passed. "Though originally it was intended to introduce elected representation to the councils yet as a matter of party compromise in Parliament, the principle of nominated representation was adhered to." But the nominated members in both the central and provincial legislatures were nominated on the recommendation of various bodies e.g. chamber of commerce, provincial legislature (for central legislature), local bodies, land holders, university etc. It raised the maximum number of nominated representatives in the Governor-General's Council to 16 and in the case of provincial legislatures the number fixed for Bombay and Madras

was raised from 8 to 10. The United Provinces received a council of 15 members and the Punjab and Burma were allotted 9 members each. It also provided the right of asking questions after due notice provided such questions were not argumentative, hypothetical and defamatory. No discussion was allowed on any reply and the president of the council reserved the right of disallowing a question. The right to discuss the budget was also conceded but no member was allowed to propose any resolution or to ask the house to divide upon it. The budget was to be discussed as a whole and not item by item. The act widened the opportunities of non-official members for criticism, suggestion, remonstrance and enquiry.

### 3. Minto-Morley Reforms

The Minto-Morley Reforms of 1909 took the council a step further. The principle of elective representation was for the first time introduced in the Indian Councils but Muhammadans were to elect their own representatives in separate constituencies. The chamber of commerce, land holders and other special interest were given direct representation. The general constituencies themselves were constituted out of municipalities and district boards. But with all this the principle of elective representation on councils was an important change. The maximum number of members fixed for the central legislature was 60, that for the major provinces 50 and for the rest 30.

The councils were thus constituted of officials, nominated non-officials and elected representatives. In all the provincial councils, the official votes were in minority, though the government with the help of nominated members, could in all provinces except in Bengal, out-vote the elected members. In the central

legislature the Government had, at all times, a clear majority.

The powers exercised by the previous legislatures were continued, and the enlarged legislatures were not only given the right to discuss the budget but also to move resolutions on it. They could also move resolutions as recommendation to government on matter of general interest. It also gave the members wide opportunities for influencing the administration in general.

An integral part of the reforms of 1909 was the appointment of Indian members to the Executive Councils of the Governor-General and provincial Governors. This was a radical change. Lord Morley also appointed an Indian to serve on the Council of the Secretary of State. "The appointment of Indians to the highest offices in government was very important because it gave a recognition of the principle of the civil as against the official control of the departments as also against the principle of racial discrimination in high appointments which was hitherto followed."

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## CHAPTER I THE REFORMS OF 1919

*"Dyarchy is obviously a cumbersome, complex, and confused system having no logical basis, rooted in compromise and defensible only as a transitional expedient"*  
—Sir William Marris.

### 1. The déclaration of Policy.

The Minto-Morley Reforms of 1909 gave India only a rudimentary and incomplete form of Parliamentary government. In essence no substantial political progress was achieved. The executive still remained supreme instead of being responsible to the legislature. The enlargement of the councils although led to considerable popular influence but unexpected weakness manifested in the course of their working. "The official members formed a solid block and the non-officials could do nothing but to criticise. Moreover, the growing discontent of the people led to the necessity of making some concession to their roused political consciousness." This was all the more necessary in view of the great services of Indians to the cause of the allied powers in the Great War. All these causes led Mr. E. S. Montague, the then Secretary of State for India, to make the historic declaration of 20th August 1917. It begins as follows, "The policy of His Majesty's Government with which the Government of India are in complete accord is that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in

India, as an integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible, and I would add that progress in the policy can only be achieved by successive stages. The British Government and the Government of India on whom the responsibility lies for the welfare and advancement of the Indian peoples, must be the judges of the time and measure of each advance and they must be guided by the cooperation received from those upon whom new opportunities of service will thus be conferred and by the extent to which, it is found that confidence can be reposed in their sense of responsibility. Ample opportunities will be offered for public discussion of the proposals which will be submitted in due course to Parliament."

## 2. The Main Features

To implement this policy the Government of India Act 1919 was passed. The chief features of the new Act were that direct election was for the first time introduced in the legislatures. Secondly the Legislative Assembly had a clear elected majority. The powers of the Legislative Assembly were considerably enlarged. Besides the right of moving resolutions and interpellating the government, the Legislative Assembly was given the right to move adjournments, to discuss urgent matters of public importance, and what was most important, was given an effective control over a large portion of the budget. Under Section 25 of the Act, supplies were to be voted in the form of demands for grants, and except for certain heads declared by the government to be non-votable, the Assembly had in ordinary circumstances, control over the items presented for its approval.

Another important change introduced in the cen-



tral government was to increase the number of Indian Executive Councillors. Before the Reforms the Governor-General's Council consisted of one Indian member out of 6 ordinary members. After 1919, 3 out of 6 were Indians. This is meant as a fulfilment of that part of the declaration of 1917 which spoke of the increasing association of Indians in every branch of Government.

The central and provincial subjects were earmarked, local government, education, sanitation, public health, hospitals, asylums, public works, development of industries, agriculture, veterinary and co-operative societies were provincial transferred subjects while land, irrigation, famine, justice, police, prisons, factories etc, were the provincial reserved subjects. Other subjects were entrusted to the central Government. In finance too a distinction was drawn the centre received income tax, railway receipts, posts and telegraphs, customs, salt tax, opium proceeds while the provinces got land revenue, excise, irrigation, forests, stamps and registration. The provinces however, were bound to pay contributions to the centre, until relieved of these by increase in central receipts.

### 3. The Central Government

The act entrusted the administration of India to a Governor-General in Council on the spot. But in all matters the authority of the Parliament was supreme and was exercised through the Secretary of State for India who is a member of the British Cabinet. The Governor-General in Council with this limitation is vested "with all the powers of government". His Council consisted of 6 ordinary members and the Commander-in-Chief who is an extraordinary member. The main departments of which the members hold portfolios are Revenue, Law, Home, Finance,

Commerce and Industry and Education, besides the Foreign and Political, which is directly under Governor-General. At present the Executive Council, in addition to the Viceroy and the Commander-in-Chief, consists of 3 Europeans, 4 Hindus, 4 Muslims, 1 Sikh, 1 Scheduled caste and one Parsi.

The Indian Legislature consists of the Governor-General and two chambers—Council of State and the Legislative Assembly. Ordinarily no bill is deemed to have been passed unless it is agreed to by both the Houses and unless it receives the assent of the Governor-General.

The maximum number of members in the Council of State is 60 of whom not more than 20 should be officials. It consisted of 34 elected, 6 nominated and 20 officials. The distribution of seats in the Council of State is given in the table on the following page. The original purpose for creating the chamber was to develop a body of elder statesmen. The system of election is by separate electorate. The duration of the period of each member is 5 years. The Governor-General however can extend or cut short the life of the house. The President of the house is appointed by the Governor-General from among its members, although recently it was given an elected president.

The Legislative Assembly is to consist of 140 members (excluding Burma) but its number may be increased or decreased. At least five-sevenths of the members of the Assembly are elected and at least one-third of the other members are non-officials. The duration of its life is 3 years. But the Governor-General has the power to extend the life or curtail it. It may not be out of place to mention that in the Dominions of Canada, Australia, and South Africa, the Governor-General can dissolve but cannot extend

the life of the house. Within 6 months from dissolution or within 9 months with the sanction of the Secretary of State for India the Governor-General is bound to fix the date of the next election of the house. It consisted of 141 members of whom 103 were elected and 41 were nominated of whom 26 were officials. The distribution of seats of members is given in the table on the following page. The method of representation is by special interests and communal basis. The first President of the Legislative Assembly was appointed by the Governor-General for 4 years. Thereafter this office was filled by the Assembly from amongst its members. Besides the President there is also a Deputy President elected by the house. But election of both the President and Deputy-President requires the sanction of the Governor-General.

#### 4. Dual Government in the Provinces.

The provinces in India were classified into 10 major and 5 minor provinces. The major provinces are governed by the Governor and his cabinet consisting of executive councillors and ministers and each has a Legislative council but in the minor provinces there is no Legislative Council except in Coorg and their administration is carried on by a Chief Commissioner.

The Act of 1919 prescribes the number of members of the Legislative Councils of the major provinces as follows :-

Bengal	145	Bihar and Orissa	98
Madras	118	Punjab	83
United Provinces	118	Central Provinces	70
Bombay	111	Assam	55
Burma	101	N.W.F. Province	40
(created in 1923)		(created in 1952)	

## The Composition of the Council of State

Province	Nominated		Elected				European Com- merce	Total
	Officials	Non- officials	Non- Maho- medan	Maho- medan	Sikh	Non- Comm- unal		
Government of India	11	—	—	—	—	—	—	11
Madras	1	1	—	1	—	—	—	7
Bombay	1	1	3	2	—	—	—	8
Bengal	1	1	3	2	—	—	—	8
United Provinces	1	1	3	2	—	—	—	7
Punjab	1	3	1	2	1	—	—	8
Bihar and Orissa	1	—	2	1	—	—	—	4
Central Provinces and Berar	—	2	—	—	—	1	—	2
Assam	—	—	—	1	—	—	—	1
Burma*	—	—	—	—	—	1	1	2
N W Frontier Province	—	1	—	—	—	—	—	1
Total	17	10	16	11	1	2	3	60

\* Since 1st April 1937, Burma was separated from British India and the seats assigned to Burma were, therefore, vacated

# The Composition of the Legislative Assembly

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## ASSEMBLY HANDBOOK

Province	Nominated		Elected					Total	
	Officials	Non-officials	Non-Mahomedan	Mahomedan	Sikh	European	Land Holders		Indian Commerce
Government of India	14	5	—	—	—	—	—	—	19
Madras	2	—	10	3	—	1	1	1	13
Bombay	2	1	7	4	—	2	1	2	19
Bengal	2	2	6	6	—	3	1	1	21
United Provinces	1	2	8	6	—	1	—	—	19
Punjab	1	2	3	6	2	—	—	—	15
Bihar and Orissa	1	1	8	3	—	—	1	—	14
Central Provinces and Berar	1	1	3	1	—	—	—	—	7
Assam	1	—	2	1	—	1	—	—	5
Burma*	1	—	3	—	—	1	—	—	5
Delhi	—	—	1	—	—	—	—	—	1
Ajmer-Merwara	—	—	1	—	—	—	—	—	1
N. W. Frontier Province	—	1	1	—	—	—	—	—	1
Total	26	15	52	30	2	9	7	4	145

\* Since 1st April 1937, Burma was separated from British India and the seats assigned to Burma were, therefore, vacated.

Not more than 20 per cent. of the members of each Council should be officials, at least 70 per cent should be elected. The Governor of a province is not a member of the Council but he can address it

Provinces were the sphere where responsible government was first made to work. In fact the Montague-Chelmsford Report clearly stated that the provinces should be emancipated from the control of the Central Government before Parliamentary responsibility in the provinces may be introduced. The object of the Act was therefore the relaxation of the authority of the centre over the provinces. The chief features of the reforms from which the name dyarchical government arises is the separation of functions into two classes, one known as the reserved departments, which the Governor with the help of the Executive Council administers under the control and the supervision of the Governor-General and Secretary of State, and the other known as the transferred departments which are administered by the Governor acting on the advice of the ministers responsible to the Legislative Council of the province. The purpose of this division was to introduce responsibility in certain nation-building departments and to give legislatures the right to control and direct their policy.

As far as transferred subjects are concerned, the control of the Secretary of State is much relaxed and is exercised only for the following purposes —

- 1 To safeguard the administration of central subjects,
- 2 to decide question arising between two provinces in cases where the provinces concerned fail to arrive at an agreement,
- 3 to safeguard imperial interests,
- 4 to determine the position of the Government of

India in respect of questions arising between India and other parts of the British Empire and

5 to safeguard the due exercise and performance of any powers and duties passed by or imposed on the Secretary of State or the Secretary of State in Council under Act, [Section 29A, Section 30 (1a), Part VII A, of the Government of India Act 1919 of any rules made thereunder]

So far as the central government was concerned Section 45A (3) of the act laid down that the "power of superintendence, direction and control over local governments vested in the Governor-General shall, in relation to the transferred subjects be exercised only for such purposes as may be specified in rules made under this Act" The devolution rules limited this control to the first, second and, fifth classes of the rules which the Secretary of State made restricting his own authority Within these limits the provincial government in the transferred departments is responsible to the legislature and is administered by ministers responsible to the Council

The provincial councils enjoy much larger powers than the central legislature in all matters excepting legislation The legislative authority of the provincial councils is restricted in two ways by the previous sanction of the Governor-General in Council which is required in certain specific matters, and by the provincial character of the acts passed by the councils The Governor has also the right of certifying of vetoing or of reserving for consideration of the Governor-General any bill passed by the provincial council The power of certification is exercised when a bill or its clause affects the safety or tranquillity of a province, and, in such a case the Governor

can direct that no proceedings shall be taken thereon. The Governor has also the power to withhold the assent from a bill and such a bill shall not have the effect of law.

Subject to these restrictions, the legislative powers in the provinces are in the hands of the council. The financial authority of the provincial councils over the transferred subjects are complete. The council may reduce or omit any demand made on behalf of the transferred departments. In case of reserved departments, however, the Governor is given the right of certifying that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subjects. There are also important heads on which the council's vote is not required for expenditure. These non-votable items are (1) the provincial contribution to central government (2) interest and sinking fund charges on loans (3) expenditure of which the amount is prescribed by law (4) the salaries and pensions of High Court Judges and the Advocate-General of the province, if any.

## 5 Revision of the Constitution.

The act also provided for the appointment of a commission for the purpose of inquiring into the working of the system of government, the growth of education, the development of representative institutions in British India, and matters connected therewith, and of reporting as to whether and to what extent it was desirable to establish the principle of responsible government, or to extend, modify or restrict the degree of responsible government existing therein, including the question whether the establishment of second chambers in the provinces is or is not desirable. Originally it was provided to appoint



this commission 10 years after the passing of the Government of India Act 1919. But later by the Government of India (statutory commission) Act 1927 the words "within" were substituted for "after" and the commission was consequently appointed in November 1927

## CHAPTER IV

### THE NEW CONSTITUTION. (1935)

*"Happy thrice happy everyone  
Who sees his labour well begun."*

#### 1. The Government of India Act 1935.

The dyarchical system introduced in the provinces by the Government of India Act 1919 resulted in a complicated system of administration. As Sir William Morris puts it, "Dyarchy is obviously a cumbersome, complex, confused, system having no logical basis, rooted in compromise and defensible only as a transitional expedient". In 1942 therefore the Muddiman Committee enquired into its working. Later the Nehru Committee Report appointed by the All Parties Conference went thoroughly into this question. The Nehru Report, published in 1928 suggested joint electorate, with reservation of seat according to population for minority Community. It recommended the creation of 2 more Muslim majority Provinces Sind and NWFP. The proposed all-India constitution, moreover, under which India was to attain Dominion Status with full responsible government at the Centre as well as in the Provinces, was more unitary than federal in character,

although it was intended to cover the States. Most of the Moslem leaders reacted to the Report with a full-scale declaration of their claims. They insisted that separate electorates must be retained and that, since the theory of Provincial 'balance' required that the Provinces should be as free as possible from the control of a Centre which must reflect the great Hindu majority in India as a whole, the future constitution must be essentially federal.

The Report of the Simon Commission published in 1930, on the other hand recommended (a) that Provincial autonomy should be strengthened by further devolution from the Centre by the extension of responsible government over the whole field of administration, including law and order, and (b) that no change should be made for the present in the Central executive, but that the Central legislature should be reconstituted on a federal instead of a unitary basis, its members being indirectly elected by the Provincial legislatures, not directly by British-Indian constituencies. The ultimate establishment of an all-India federation, including the States, was relegated to the distant future nor was any reference made to Dominion Status, though in 1929 the attainment of that status had been officially declared to be the 'natural issue' of the policy of 1917. A marked feature of the Report was its reversion to the scepticism which had prevailed before 1917 as to the practicability of British parliamentary government in India: it suggested that the Provinces might in course of time develop other and varying constitutional practices and asserted that in any case the Central or Federal Government could never operate on British lines.

The next phase of the discussions was that of the Round-Table Conference which held three sessions in London, in 1930, 1931, and 1932. Its personnel

consisted of representatives of the British political parties, of parties and communities in British India, and of the States. The Congress was represented only at the second session and then by Mahatma Gandhi alone. The outcome of the Conference was incomplete, measure of agreement as to the main lines of a new constitution for India—a federal constitution, with responsible government, subject to specific 'safeguards', operating fully in the Provinces and partially at the Centre. Communal dissension was still the outstanding feature of the discussion. Mahatma Gandhi's personal efforts to obtain agreement having failed, a 'Communal Award' was made by the British Prime Minister, maintaining separate electorates and arranging the distribution of seats on the lines of the 'Lucknow Pact' of 1916, as the only means of resolving the deadlock. The communal issue was also reflected in the controversy as to the character of the proposed Central Government, the Hindu representatives favouring a strong and unitary Centre based on direct election, the Moslems and other minorities insisting on a strictly federal system, with the maximum of Provincial autonomy and indirect election to the Centre on a Provincial footing.

In the light of proceedings of the Conference the British Government formulated its proposals in a White Paper which was submitted to the consideration of a Joint Select Committee of both Houses of Parliament. Its report formed the basis of a bill which was introduced at the end of 1934 and became law in the summer of 1935.

The main provisions of the Act of 1935 were, as follows. (i) It completed the development of Provincial autonomy by giving the Provinces a separate legal personality and liberating them entirely from Central control except for certain specific purposes. (ii) It

established full responsible government, subject to 'safeguards', in all the Provinces (which, with the new Provinces of Sind and Orissa, now numbered eleven) (iii) It established "The Federation of India", comprising both Provinces and States, with a federal Central Government and legislature for the management of Central subjects (iv) Dyarchy, abolished in the Provinces, was reproduced at the Centre. The subjects of foreign affairs and defence were 'reserved' to the control of the Governor-General the other Central subjects were 'transferred' to Ministers, subject to similar 'safeguards' as in the Provinces, (v) The federal principle was organised in the provision for the indirect or Provincial election to the lower house of the Central legislature, but in general the constitution accorded more with the closer than with the looser type of federation (vi) On the other controversial issue the Act maintained the policy of 1917. On the one hand it confirmed and extended parliamentary government in the Provinces and introduced it at the Centre on the other hand it retained separate electorates, both Provincial and Central, distributing the seats on the line of the 'Communal Award' (vii). As to Dominion Status, it was officially declared that the provisions of the Act which precluded full self-government were to be regarded as transitional and it was intimated that, mainly by usage and convention, India under the newer constitution might quickly acquire the same freedom, internal and external, that of the other members of the British Commonwealth.

The part of the Act which established the Federation was not to operate until a specified number of States had acceded to it. The rest of the Act came into force partly on July 3, 1936, when the electoral provisions began to operate and completely on April

## 2. The Indian Federation.

The most outstanding feature of the new Act is the conversion of India from a unitary state to a federation. In conformity with the White Paper and the Report of the Joint Parliamentary Committee, the Act provides for the establishment, by a proclamation of His Majesty, if an address in that behalf has been presented to him by each House of Parliament, of a Federation of India under the Crown. The units of the federation will be the Governor's provinces<sup>1</sup> and the chief commissioner's provinces and such Indian states whose rulers signify their desire to accede to the Federation by a formal Instrument of Accession.

Federation in its perfect form is, that form of state which forms a single state in relation to other nations, but which consists of many states with regard to its internal government. The underlying idea of a federation is to give a unified front to foreign state while its units are created as a matter of administrative convenience. In other words, Federation is a natural constitution for a body of states which desire union and do not desire unity. The central authority in a federation represents the whole, and acts on behalf of the whole in external affairs and in such internal affairs as are held to be of common interest, while its units look after matters of local importance within the sphere allotted to them by the constitution. Such federations exist in United States of America, Canada, and Australia. A unitary state, however, is one in which the governmental authority is fundamentally vested in one single organization, and all local units, if any, owe their existence to, and receive their authority from this body. In unitary governments, therefore, all the local units are creations of the central

1 These have been described in Chapter 1.

government as a matter of convenience and their existence and their powers may be modified or destroyed at its pleasure,\* while in the federation neither the federal government nor the federal units can legally modify, destroy or encroach upon the other without a change in the constitution

Federation elsewhere has usually resulted from a pact entered into by a number of political units each possessed of sovereignty or at least of autonomy, and each agreeing to surrender a defined part, of their sovereignty or autonomy to the new central organisation for common good. India, however, has little in common with the historical precedents of this kind. The British Indian provinces are not even autonomous, for they are subject both to the administrative and legislative control of the Government of India and the Secretary of State in whom are vested powers of control over "all acts, operation and concerns which relate to the Government or revenues of India." The provinces, therefore, have no original or independent power or authority to surrender. The States, on the other hand, though they are under the suzerainty of the King-Emperor form no part of His Majesty's dominions. Their contact with British India has hitherto been maintained by the conduct of relations with their rulers through the Governor-General in Council. Moreover, since Parliament cannot legislate directly for their territories, the range of authority to be conferred upon the Federal Government and Legislature in relation to the States must be determined by agreement with their rulers and the States have made it plain that they are not prepared to transfer to the Federal Government the same range of authority in their territories as it is expedient and possible to confer upon it in relation to the Provinces. The position will, therefore, necessarily be that unlike

other federations, in the Indian Federation the range of powers to be exercised by the Federal Government and Legislature will differ in relation to the two classes of units which compose it. Yet federation was the only solution for such a vast country as India comprising an area of 15, 70,000 square miles with a vast population."

At the same time federation was advantageous to both the Indian states and British provinces. The princes felt that in such a federation they will have a voice in such issues as defence and customs policy, for in the existing regime they have almost no say in these matters while the introduction of high protection has begun seriously to effect state interest. The provinces, on the other hand, gained autonomy which they never possessed before and got a legal basis.

The scheme of federation will become operative only after states representing at least 52 out of 104 seats allotted to the states in the Council of State and having half the population of states have declared their decision to accede to the Federation. Accession depends on the free determination by the ruler of full age and not under any incapacity. The terms of accession may vary in each case, but it is essential that a state should accept the fundamental principles of Federation. Choice is given only in the power to accept or reject certain subjects. The acceptance of an accession rests with the Crown but 20 years after the inauguration of the Federation the Crown may accept it only if both houses of Indian Legislature so desire.

The first step requisite in the transfer of a unitary to a federal polity is to define by statute the jurisdiction and competence of the Federal and local authorities respectively. In the case of state members of the

Federation this will be determined by the instrument of Accession executed by the ruler thereof. The provinces however are made autonomous with a defined and exclusive share of Government

### 3. The Secretary of State.

The authority of the Crown is to be exercised by the Secretary of State for India who will continue to be a member of the cabinet of Parliament, to which body he would be responsible for his action. The Act abolishes the Council of Secretary of State and makes him a minister of the Crown individually responsible for all the authority vested in the Crown in relation to India. The Federation and the provinces are bound under section 157 of the Act to supply the Secretary of State for India with funds to enable him to make such payments as he may have to make in respect of any liability which falls to be met out of the revenues of Federation or of the province as the case may be.

### 4. Federal Executive.

The Governor-General is at the head of the Federation as representative of the Crown and will also exercise the powers of the Crown in relation to the states outside the Federal sphere. The Executive authority of the Federation is given in Section 8. It covers —

(a) the matters with respect to which the Federal Legislature has power to make laws,

(b) the raising in British India on behalf of the Crown of naval, military and air forces and the governance of His Majesty's forces borne on the Indian establishment.

(c) the exercise of such rights, authority and jurisdiction as are exercisable by the Crown by treaty



grant, usage, sufferance, or otherwise in relation to the tribal areas.

Two important limitations are imposed on this authority. Firstly the Federal executive authority does not, save as expressly provided in the Act, extend in any province to matters with respect to which the Provincial Legislature has power to make laws. Secondly in relation to a State which is a member of the Federation, the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. The executive authority of the Ruler of a Federated State is, however, to continue to be exercisable in relation to matters with respect to which the Federal Legislature has power to make laws for that State. This provision is not to apply when the executive authority of the Federation becomes exercisable in the State to the exclusion of the executive authority of the Ruler by virtue of a Federal law.

The Governor-General aided and advised by a council of ministers, not more than 10, responsible to the Federal Legislature is the executive power and authority of the Federation. The ministers are chosen and summoned by him and hold office during his pleasure but if a minister is not a member of either house of the Federal Legislature for 6 months he ceases to be a minister.

The salary of a minister, which may not be varied during his term of office, is determined by federal Act, but until such time, is determined by the Governor-General. It is provided that the question whether any and, if so, what advice was tendered by ministers to the Governor-General may not be enquired into in any court. Certain departments, namely those concerned with Defence, External Affairs,

Tribal Areas and Ecclesiastical Administration will be out of the purview of the ministers. By tribal areas is meant the frontier lands of India and Baluchistan which are not parts of British India or Burma or any Indian or Foreign State although they form a British sphere of influence. The reserved departments will be administered by the Governor-General with the help of not more than 3 counsellors whose salaries and conditions of service will be prescribed by His Majesty in Council. The responsibility of the Governor-General with respect to these departments would be to the Secretary of State and thus ultimately to Parliament.

The Governor-General may also appoint a financial adviser whose function will be to advise him in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federal Government and an Advocate-General to perform such functions of advising the Federal Government and other duties as may be assigned to him. The Advocate-General has audience in all British Indian courts and in federal issues in federated states courts.

### 5. Special Responsibilities of Governor-General.

The special responsibilities of the Governor-General are of two kinds

1. In the exercise of his functions the Governor-General shall have the following special responsibilities, that is to say —

(a) The prevention of any grave menace to the peace or tranquillity of India or any part thereof

(b) The safeguarding of the financial stability and credit of the Federal Government.

(c) The safeguarding of the legitimate interests of minorities,

(d) The securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests,

(e) The securing in the sphere of executive action of the purposes which the provisions of chapter III of Part V of Government of India Act, 1935 are designed to secure in relation to legislation

(f) The prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment

(g) The protection of the rights of any Indian State and the rights and dignity of the Ruler thereof, and

(h) The securing that the due discharge of his functions with respect to matters with respect to which he is by or under the Government of India Act 1935 required to act in his discretion, or to exercise his individual judgement, is not prejudiced or impeded by any course of action taken with respect to any other matter.

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgement as to the action to be taken.

## 6. The Provincial Autonomy.

The authors of the Montague-Chelmsford Report wrote "The provinces are the domain in which the earlier steps towards the progressive realisation of responsible government should be taken." The Statutory Commission also observed "It was our intention that in future, each province should be as far as pos-

sible mistress in her own house'. The Joint Parliamentary Committee Report accepted the principle of provincial autonomy which they pointed out had the greatest measure of support from every quarter.

By provincial autonomy is meant the Government of a province by the people freed, as far as practicable, from the control of the central power. It means not only the right of a province to make its own laws and administer its own affairs, but also responsibility of the executive to the provincial legislature and freedom within defined limits from the control of the central government and central legislature.

The provincial head is the Governor who exercises executive authority on behalf of the Crown with the help and advice of a council of ministers, subject to his retention of special powers and responsibilities. The provincial ministers are to be chosen by the Governor of the province and hold office during his pleasure. They are to have the same duties in relation to the affairs of the province as the federal ministers have in respect of the federal affairs. All the provincial subjects are transferred to the control of ministers.

## 7: Special Responsibilities of the Governor.

The Governor has the following special responsibilities in which he is to act at his discretion subject to the control of the Governor-General.

(a) The prevention of any grave menace to the peace or tranquillity of the province or any part thereof.

(b) The safeguarding of the legitimate interests of minorities.

(c) The securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them.

by or under the Act and the safeguarding of their legitimate interests

(d) The securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of the Act (which deals with discrimination) are designed to secure in relation to legislation,

(e) The securing of the peace and good government of areas which by or under the provisions of the Act are declared to be partially excluded areas<sup>1</sup>

(f) The protection of the right of any Indian States and the rights and dignity of the Ruler thereof and

(g) The securing of the execution of order or directions lawfully issued to him under Part VI of the Act (which deals with administrative relations) by the Governor-General in his discretion

It should be noted that a Governor, unlike the Governor-General, has no special responsibility for —

(1) the safeguarding of the financial stability and credit of either the Federal Government or his province

(2) the prevention of action which would subject the goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment,

(3) the securing of the due discharge of functions with respect to reserved departments

The Governor of Central Provinces is also bound to secure a fair share of revenues to be spent on Berar, the Governors of Bengal and Assam have a responsibility for the excluded areas in those provinces, the Governor of Sind for the Lloyd Barrage Scheme, and the Governor of the North-West Frontier Province

1 These areas have been defined in the Government of India (Excluded and Partially Excluded areas) Order in Council 1935 published in the Gazette of India of the 21st March, 1936.

for the unimpeded performance of his duties as Agent of the Governor-General in respect of the tribal areas. All the Governors are bound to use individual judgment in respect of any changes of rules affecting the organisation or discipline of police forces. Apart from the special powers, the Governor may make rules requiring ministers and secretaries to bring to his notice any matter which may affect his special responsibilities.

The Act also provides that if it appears to the Governor of a province that the peace or tranquillity of the province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating those operations, direct that his functions shall, to such extent as may be specified in his direction, be exercised by him in his discretion and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.

In order to further this object, section 58 provides that the Governors, in their discretion shall make rules for securing that no records or information relating to the intelligence service dealing with terrorism are to be disclosed to anyone other than such persons within the provincial Police Forces as the Inspector Generals or the Commissioners of Police may direct or such other public officers outside those Forces as the Governors themselves may direct.

Provision is also made for the appointment of an Advocate-General for the province whose duty it will be to give advice to provincial government upon such

legal matters and to perform such other duties of a legal character, as may from time to time be referred to or assigned to him by the Governor

Although provincial autonomy and All-India Federation are laid down in the same Act it is provided that provincial autonomy will precede the change in the centre, and, as such, the provisions of part XIII of the Act shall apply between the commencement of provincial autonomy and the establishment of Federation<sup>1</sup>

## 8. Administrative Relations.

The executive authority of the provinces and states must be so exercised as not to infringe the federal law. The federal acts may impose duties to the units subject to the payment of additional staff to be decided by arbitration, if necessary. The Governor-General has power to give directions to rulers if they act so as to prejudice the exercise of the executive authority of the federation or fail to carry out obligations as to administering federal laws. Still wide powers exist as regards the provinces where Governors are instructed to use their executive power in any way necessary to give effect to the federal law and to prevent menace to the peace or tranquillity of India. Moreover, on addresses from the provinces an Inter-Provincial Council may be established to deal with inter-provincial disputes and to discuss matters of common interest.

## 9. The Federal Court.

In a constitution created by the federation of a number of separate political units and providing

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<sup>1</sup> Also see the Government of India (Commencement and Transitory Provisions) Order 1986 published in the Gazette of India of 25th July 1986.

for the distribution of powers between a Federal Legislature and executive on the one hand and the Legislatures and executives of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself. Thus the ultimate decision on questions concerning the respective spheres of the Federal, Provincial and State authorities is entrusted to the Federal Court independent of Federal, Provincial and State Governments.

The court shall consist of a chief justice of India and such number of other judges as His Majesty may deem necessary. It will have —

- 1 An Original jurisdiction.
- 2 An appellate jurisdiction in appeals from High Courts in British India
- 3 An appellate jurisdiction in appeals from the High Courts in Federated States.

Section 208 of the Act provides that an appeal may be brought to the judicial Committee of the Privy Council from a decision of the Federal Court as follows —

Without leave—from any judgment of the Federal Court given in the exercise of its original jurisdiction in any dispute which concerns the interpretation of the Act or of an order in Council made thereunder; or the extent of the legislative or executive authority vested in the Federation by virtue of the instrument of Accession of any State, or arises under an agreement made under Part VI of the Act in relation to the administration in any state of a law of the Federal Legislature.

• By leave of the Federal Court or of His Majesty in Council—in any other case



## 10. The High Commissioner.

The office of the High Commissioner for India in the United Kingdom is to continue. He may also act for Burma. His functions are those of non-political character. He acts as an agent to the central Government and the various provincial governments and procures stores for them, furnishing trade information and dealing with the education of the Indian students. Under the new constitution he would be controlled by the Governor-General in his individual judgment, and may be authorised to act for a province, a federated state or Burma. Sub-Section 2 of Section 157 of the Act provides that the Federation and every Province shall secure that there are from time to time in the hands of the Secretary of State and the High Commissioner sufficient moneys to enable payment to be made of all pensions payable out of the revenues of the Federation or the Province, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.

## 11. The Federal Railway Authority

The executive authority of the Federation in respect of regulation, construction, maintenance and operation of railways is to be exercised by Federal Railway Authority. The Authority is to act on business principles, due regard being paid to the interests of agriculture, industry, commerce and the general public. A Railway Tribunal is also to be set up to adjudicate against objections raised with respect to the construction and reconstruction of the railways and other complaints against the Railway Authority. For this purpose the Railway Tribunal is authorised to make orders.

An appeal from the decision of the Railway Tribunal lies to the Federal Court on a question of law and the judgment of the Federal Court is final. A Railway Rates Committee may be appointed to advise the Governor-General in case of complaints by users against the rates fixed by the Authority, and his recommendation is necessary for any bill regarding rates which it is desired to propose.

## 12. The Reserve Bank

The Reserve Bank is to regulate the issue of Bank notes and keeping of reserves with a view to securing monetary stability in British India and generally operate the currency and credit system of the country. The general superintendence and direction of the Reserve Bank is entrusted to a Board of Directors.

Section 152 of the Act provides that the functions of the Governor-General with respect to the following matters shall be exercised by him in his discretion, that is to say—

(a) the appointment and removal from office of the Governor and Deputy Governors of the Reserve Bank of India, the approval of their salaries and allowances, and the fixing of their terms of office.

(b) the appointment of an officiating Governor or Deputy Governor of the bank

(c) the supersession of the Central Board of the Bank and any action consequent thereon and

(d) the liquidation of the Bank

In nominating directors of the Reserve Bank of India and in removing from office any director nominated by him, the Governor-General shall exercise his individual judgment.

## 13. Separation of Burma and Aden.

The Act provides for the separation of Burma and

Aden from the rest of India. The new constitution of Burma is dealt with in a later chapter.

The Government of Aden may be regulated by an order in Council. According to the colonial usage such an order may delegate legislative power to any person in Aden, but without impairing in any way the right of the Crown in Council to legislate at the same time. The order may provide for appeal from Aden Court to an Indian High Court, probably Bombay High Court and the expenses for such a service will be paid to the Government concerned. Further appeals may lie to His Majesty in Council. The property held by the Government of Aden is vested in the Crown.

#### 14. Amendment of the Constitution.

Amendment of the constitution by the Federal and Provincial legislature is generally forbidden but some changes are allowed to be made by order in Council with the assent of the British Parliament in certain matters on the request of the Federal or provincial legislatures, not earlier than 10 years from the inauguration of the Federation of provincial autonomy. Such matters are (1) the size and composition of the chambers of Federation and the choice or qualification of members but not so as to change the relative proportions between the Council of State and the House of Assembly or between the British India and Indian States (2) the number of chambers in the provincial legislatures, their size, composition, or method of choosing or their qualifications of members, (3) the substitution of literary in lieu of higher educational qualifications for women's franchise, or the entry of names of qualified women without any application, (4) any other amendment as to qualification

of voters. The changes in head (3) may however be made at any time on the condition that the request is so made by a province. But before issuing such orders, it is necessary that the views of respective governments and legislatures may be obtained. As stated above all such orders require the sanction of Parliament except in case of emergency when the order may be issued but will lapse unless so approved at the earliest opportunity.

## 15 Failure of Constitutional Machinery

The Act contains special provisions enabling Governor-General to act promptly in case of a breakdown of the constitutional machinery. Section 45 provides that if at any time the Governor-General is satisfied that a situation has arisen in which the Government of the Federation cannot be carried on in accordance with the provisions of the Act, he may by proclamation

(a) declare that his function shall be to such extent as may be specified in the proclamation be exercised by him in his discretion.

(b) Assume to himself, all or any of the powers vested in or by any Federal body or authority.

But such a proclamation shall not affect the Federal Court and any proclamation under this power must be laid before Parliament and shall cease after six months, unless approved by a resolution of both houses from time to time. The suspension of the constitution, however should not exceed 3 years, thereafter new provision must be made by Parliament.

Similar provisions have been made in the case of the provinces where the Governor can also assume powers under section 93, but high Courts are excluded from this provision. An extension of proclamation under section 93 Rule in the provinces has been

effected by the India and Burma (temporary and Miscellaneous Provisions) Act 1942.

## CHAPTER V

### THE FEDERAL LEGISLATURE

*‘How to transmit the force of individual opinion and preference into public action This is the crux of popular institution’ — A B Hart*

The Federation proposed in the Government of India Act, 1935, has not yet come into force nor is there any likelihood of its inauguration. This chapter therefore only details the provisions in the Act regarding Federation although no such Federation exists in fact.

The Federal Legislature is to consist of His Majesty, represented by the Governor-General and two chambers, the Council of State and the House of Assembly commonly known as the Federal Assembly.

#### 1 The Council of State.

The Council of State is to consist of not more than 260 members, of which 156 are to be representatives of British India, and not more than 104 representatives of Indian States. Out of the British Indian seats 150 are to be elected representatives as detailed on the next page while 6 are to be nominated by the Governor-General in his discretion. The representation of Indian States is to be in accordance with the long Table of Seats for the Council of State and the Federal Assembly in the First Schedule of the Government of India Act 1935.

The Council of State  
Representatives of British India  
TABLE OF SEATS

Province or Community	2 Total Seats	3 General Seats	4 Seats for Scheduled Castes	5 Sikh Seats	6 Mahomedan Seats	7 Women's Seats
Madras	20	14	1		4	1
Bombay	16	10	1		4	1
Bengal	20	8	1		10	1
United Provinces	20	11	1		7	1
Punjab	16	3		4	8	1
Bihar	16	10	1		4	1
C. P. & Berar	8	6	1		1	
Assam	5	3	1		2	
N. W. Province	5	1			4	
Orissa	5	4			1	
Sind	5	2			3	
British Baluchistan	1	1			1	
Delhi	1	1			1	
Ajmer-Merwara	1	1				
Coorg	1	1				
Anglo-Indians	1					
Europeans	7					
Indian Christians	2					
Total	150	75	6	4	49	6

**The Federal Assembly**  
*Representatives of British India*  
**TABLE OF SEATS**

Province	General Seats			Sikh Seats	Mahomedan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for Commerce & Industry	Land holders Seats	Seats for Labour	Women's Seats
	2	3	4									
	Total Seats	Total of General Seats	General Seats reserved for Scheduled Castes									
Madras	37	19	4		8	1	1	2	2	1	1	2
Bombay	30	13	2		6	1	1	1	3	1	2	2
Bengal	37	10	3		17	1	1	1	3	1	2	1
United Provinces	37	19	3		12	1	1	1		1	1	1
Punjab	30	6	1	6	14	1	1	1		1	1	1
Bihar	30	16	2		9			1		1	1	1
C. P. & Berar	15	9	2		3			1		1	1	1
Assam	10	4	1		3		1	1		1	1	1
N.W.F. Province	5	1			4							
Orissa	5	4	1		1		1					
Sind	5	1			3							
Baluchistan	1				1							
Delhi	2	1			1							
Ajmer-Merwara	1	1										
Gondal	1	1										
Non-Provl. Seats	4								3		1	
<b>Total</b>	<b>250</b>	<b>105</b>	<b>19</b>	<b>6</b>	<b>82</b>	<b>4</b>	<b>8</b>	<b>8</b>	<b>11</b>	<b>7</b>	<b>10</b>	<b>9</b>

The Council of State is to be a permanent body, not subject to dissolution, but, as near as may be, one-third of its members are to retire every third year. Thus the normal life of membership of each member is 9 years.

The White Paper and the Report of the Joint Select Committee suggested indirect election to the Council of State for British Indian seats, but Parliamentary criticism of this suggestion resulted in the adoption of the principle of direct election to this chamber. The members of the Council of State are now to be elected by Hindus, Sikhs and Muhammadans voting in territorial constituencies. An electorate of 100000 is estimated. The Anglo-Indians, Europeans and Indian Christians, however, are to be chosen by indirect election; i.e. through electoral colleges of the members of the provincial legislatures of that community.

The representatives of the states in the Council of State are to be appointed by the Rulers of States, but no person is to be so appointed unless he is a British subject or ruler or subject of an Indian state which has acceded to the Federation.

The President and Deputy President of the Council may be chosen from amongst its members and their salaries are to be fixed by an Act of Federal Legislature. They may be removed from the office by an adverse vote for which 14 days notice is required.

## 2. The House of Assembly.

The House of Assembly is to consist of not more than 375 members out of which 250 are to be representatives of British India and not more than 125 representatives of Indian States. All the British Indian representatives will be elected in accordance



with the list on the preceding page while the state representation will be as detailed in the long Table of Seats regarding representatives of Indian States in the first schedule to the Government of India Act 1935. The House of Assembly, unless sooner dissolved, is to continue for 5 years from the date appointed for its first meeting.

The system of election to the House of Assembly in British India has been changed. Direct election to the Assembly has been replaced by indirect election. The reason why the indirect election has been preferred is said to be that if the constituencies were to be of reasonable size, the resultant chamber would be unmanageably large, if, on the other hand, the chamber were of a reasonable size, the constituencies on which it was based would necessarily be enormous. Hence, under the Act the Federal House of Assembly is to be in the main elected by the Provincial Assemblies according to proportional representation with single transferable vote in the case of Hindu, Muhammadan and Sikh seats. The seats of Europeans, Anglo-Indians, Christians and women are to be filled in by the representatives of those groups in the Provincial Assemblies voting in ad-hoc electoral colleges. Persons to fill the seats allotted to representatives of commerce and industry, landholders and representatives of labour are to be chosen by their communities. Special provision is made as to the election of representatives for the Chief Commissioner's provinces.

The representatives of the states are to be appointed by their rulers as in the case of the Council of State and their allocation of seats in the Federal House of Assembly is to be on the principle that the number of seats allotted to each state or group of states should be proportionate to their population.

The House of Assembly may choose from amongst

its members a Speaker and a Deputy-Speaker who will preside at its sittings and who will vacate his office if he ceases to be a member of the Assembly. He may be removed by a vote of no-confidence for which 14 days' notice is necessary. The salaries of both these officers will be fixed by a Federal Act.

The Governor-General is not a member of any of the houses of the Federal Legislature but he has a right to send message or address either chamber of the Federal Legislature or both the chambers jointly and for that purpose may require the attendance of the members. The chambers of the Federal Legislature shall be summoned to meet at least once a year and more than 12 months shall not pass between two consecutive sittings. The Ministers, the Counsellors and the Advocate-General have a right to speak and take part in the proceedings of either House but they can vote only in the House of which they are members.

The quorum of each House of Legislature is one-sixth of its strength. English is the official language of the legislature but members may be permitted to use other languages. All questions at a sitting or joint sitting of the chambers are to be determined by a majority of votes of the members present and voting other than the member presiding who is to cast his vote only in case of equality of votes.

Under Section 27 of the Government of India Act 1935, if a person sits or votes as member of either chamber when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of sub-section (3) of Section 26, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Federation.

A chamber of the Federal Legislature has power to act notwithstanding any vacancy in its membership. The validity of the proceedings of the legislature is not to be questioned merely because it was later discovered that some person who was not entitled to vote or sit has so taken part in the proceedings.

A member of the Federal Legislature may resign his office to the Governor-General. If for 60 days a member is absent from the chamber of which he is a member, without the permission of the chamber, the chamber may declare his seat to be vacant.

### 3. Communal Representation.

In accordance with the decision of the British Government, commonly known as Communal Award, the system of separate electorate has been retained, and it has been further extended to women, Christians, Anglo-Indians, Europeans, Commerce and Industry, Landholders and Labour. The depressed classes amongst the Hindus have a special method of election.

It is said that the system of communal representation protects the interests of the particular community and secures better representation of that community and that it also welds the community more closely and affords greater opportunities of education and service. But a considerable section in the country is against separate representation. Even the Muddiman Committee (Majority) Report observed that communal representation is an obstacle to political advancement but they observed "the abolition of any special communal electorate, and in this we include reserved seats, is quite impracticable at the present time." Various disadvantages have been pointed out of communal representation in India. It is said that communal representation has intensified communal cleavage and dragged religion into politics and that it

perpetuates class division, retards national progress and the way to a united regenerate India. Moreover, the concession is contagious. India is a country full of numerous castes and creeds, and gradually each community may ask for this concession.

#### 4. Distribution of Legislative Power

There will be a statutory demarcation between the powers of the federal and provincial governments. These are detailed in 7th Schedule to Government of India Act 1935 reproduced as appendix I. Its first list gives the federal subjects and the second list gives the Provincial subject while in a third list are given a number of subjects with respect to which it is proposed that the Federal Legislature shall have the power of legislating concurrently with the provincial legislatures, with appropriate provision for resolving possible conflict of law. The Federal Court is to decide whether or not the enactment has been within the competence of the legislature passing it.

In case of grave emergency, whether by war or internal disturbances, if so declared by the Governor-General, the Federal Legislature is empowered to legislate in respect of the provincial list also. But in that case a proclamation must be laid before Parliament and it falls unless it is confirmed within six months by a resolution of both the Houses. Such an act expires six months after the expiration of the proclamation. The Federation may also legislate by consent for two or more provinces but any province may repeal or amend such legislation.

The Governor-General in his discretion may also assign to the centre or to the provinces power to make a law or impose a tax on any subject not included in any of these three lists. Before making such an assignment, the Governor-General must necessarily

satisfy himself that there is no provision assigning such a subject to one side or the other. The Governor-General may also seek the advice of the Federal Court in such matters.

As regards the states, the Federation may legislate only in respect of matters accepted by the Instrument of Accession of the state concerned. The state may legislate but its legislation is void in so far as it conflicts with a valid federal law.

## 5. Restriction on Legislative Power.

It is provided that unless the Governor-General in his discretion thinks fit to give his previous sanction there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any bill or amendment which

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India, or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act or any ordinance promulgated in his discretion by the Governor-General or a Governor, or

(c) affects matters in respects to which the Governor-General is, by or under the Act, required to act in his discretion, or

(d) repeals, amends or affects any act relating to any police force, or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned, or

(f) subjects persons not residing in British India to greater taxation than persons resident in British India or subject companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein, or

(g) affects the grant of relief from any federal tax on income in respect of income taxed or taxable in the United Kingdom.

Prior sanction of the Governor-General is also required to bills effecting taxation in which provinces are interested. Similarly, legislation in respect of Reserve Bank, currency and coinage requires previous sanction.

It may, however, be noted that the grant of such prior sanction to introduce a bill does not in any way fetter the freedom of the Governor-General to refuse assent or reserve any Bill and, on the other hand, the omission of such sanction does not invalidate the act in case it has duly received the assent of the Governor-General later.

No legislature in India can make a law affecting the sovereign or the succession or the sovereignty or suzerainty of the Crown in any part of India nor can it amend the Government of India Act, or rules and orders made thereunder save when it is expressly provided in the Act. Statutory restrictions are imposed to prevent the passing of legislation which is intended to or would discriminate against British commercial interests in India. The British subjects domiciled in the United Kingdom are thus exempt from any federal or provincial act which restricts entry into India, or imposes, by reference to place of birth, race, descent, language, religion, domicile, residence, any disability or restriction, the holding of property or public office or the carrying on any occupation, trade, business or profession. But this exemption does not apply in so far as Indian subjects are subject to restriction in the United Kingdom, nor is it illegal to apply quarantine regulations or to exclude or deport undesirables. Taxation also may not differentiate against British

subjects, domiciled in the United Kingdom or Burma, or companies incorporated in the United Kingdom or Burma. The right of medical practitioner in British India and in the United Kingdom to practise in either country is recognised.

## 6 Legislative Powers of the Governor-General

Special legislative powers are given to the Governor-General. In case of emergency, at his discretion, when the legislature is not sitting, he may issue ordinances, which must be presented to the legislature when it reassembles, and which will automatically expire unless confirmed within 6 weeks after the re-assembly of the legislature. He may also, where matters within his personal discretion or individual judgment are concerned, promulgate ordinances which have effect for six months, but in that case they must be laid before Parliament.

Further, if at any time it appears to the Governor-General that, for the purpose of enabling him satisfactorily to discharge his functions, in so far as he is by or under the Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the legislature explain the circumstances which in his opinion render legislation essential and either<sup>1</sup>

(a) Enact forthwith, as a Governor-General's Act, a Bill containing such provisions as he considers necessary, or

(b) attach to his message a draft of the Bill which he considers necessary.

1. Section 44 of the Government of India Act 1935.

Where the Governor-General takes such action as is mentioned in (b) above he may at any time after the expiration of one month enact, as a Governor-General's Act the Bill proposed by him to the Chambers either in the form of the draft communicated to them or with such amendments as he deems necessary but before so doing he shall consider any address which may have been presented to him within the said period by either Chamber with reference to the Bill or to the amendments suggested to be made therein

## CHAPTER VI

### THE PROVINCIAL LEGISLATURES

*"What then is expected from a well constituted second chamber is not a rival infallibility, but an additional security"*—Sir Henry Maine

#### 1. The Provinces of India.

Besides the three presidencies of Madras, Bombay and Bengal, the Act provides that there will be 8 Governor's provinces.—The United Provinces, the Punjab, Bihar, the Central provinces and Berar, Assam, the North-west Frontier Province, Orissa and Sind. In addition to these there shall be the following Chief Commissioner's provinces—

1. British Beluchistan 2. Delhi. 3. Ajmer-Merwara. 4. Coorg. 5. The Andaman-Nicobar Islands. 6. The are known as Panth. Piploda 7. Such other



Chief Commissioner's Provinces as may be created under the Act.

The Crown has the power to create new provinces or to increase or diminish the areas of any province or alter their boundaries by order in Council. Madras, Bombay and Bengal are the oldest provinces. The population of Madras under the new arrangement is about 493 lakhs—87% Hindus, 7% Muhammadans, 4% Christians and the rest others, that of Bombay 208-lakhs 89% Hindus, 10% Muhammadans and the rest others, and that of Bengal 603 lakhs—44% Hindus, and 55% Muhammadans and the rest others. Till 1874 Bengal, Bihar, Orissa and Assam were under a Lieutenant-Governor but in that year, Assam was made a separate province under a Chief Commissioner. In 1905, however, the territories were rearranged as Western Bengal, Bihar and Orissa, and Eastern Bengal and Assam each under a Lieutenant-Governor. Public opinion was much against this partition hence the arrangements were changed in King's proclamation in 1911. Bengal proper was made a Governor's province. Bihar and Orissa and Chota Nagpur were to be placed under a Lieutenant-Governor and Assam was placed under a Chief Commissioner and was later created a Governor's Province. By the Government of India (Constitution of Orissa) Order of 1936, Orissa has been separated from Bihar. The population of Assam is 102 lakhs—41% Hindus, 34% Muhammadans and 24% tribal religions and the rest others. The population of newly-created province of Orissa is 87 lakhs, out of which about 3% are Muhammadans, 2% Christians and the rest are Hindus or profess tribal religions. The province of Bihar has a population of 363 lakhs out of which 12% are Muhammadans and the rest belong to Hinduism and tribal religions. The

United provinces consist of the old North-West Province which was under Lieutenant-Governor and Oudh which was under a Chief Commissioner. In 1877 a common officer was appointed to both these posts. In 1901 the two territories were styled as the United Provinces of Agra and Oudh. These provinces have a population of 550 lakhs—85% Hindus, 14% Muhammadans rest other. Till 1901 the existing provinces of Punjab and North-West Frontier Province were united together under a Lieutenant-Governor but in that year the latter was separated and placed under a Chief Commissioner. In 1932 it was given the status of a Governor's province with a Legislative Council. The Punjab has a population of 284 lakhs,—27% Hindus, 57% Muhammadans, 13% Sikhs and the rest others. The North-West Frontier Province has a population of 30 lakhs,—91% Muhammadans, 6% Hindus and the rest others. The Central Provinces were created in 1861 under a Chief Commissioner and Berar was placed under the same control when it was leased perpetually in 1902 by the Nizam of Hyderabad. Their population jointly is 168 lakhs—about 88% Hindus and 5% Muhammadans and the rest consists of tribal religions. Sind, of course, is the creation of the Government of India (Constitution of Sind) Order of 1936. Its population is 45 lakhs—27% Hindus and the rest belong to Islam and minor religions.

As for the Chief Commissioners Provinces, British Beluchistan consists of 5 lakhs 9% Hindus, 87% Muhammadans, 1% Sikh, and rest others. Delhi consists of 9 lakhs, 60% Hindus, 33% Muhammadans 3% Christians and the rest others. Ajmer-Merwara consists of 5,60,000 persons 78% Hindus, 17% Muhammadans and 3% Jains and the rest others. Coorg consists of 1,68,000 persons 85% Hindus, 8% Muham-

Andaman and Nicobar consist of 29,000 persons, 26% Hindus, 22% Muhammadans, 4% Christians, 33% of tribal religions, Buddhist and others

Total population of British India is 2958 lakhs of which 64% are Hindus, 25% Muhammadans, 1 2% Sikhs and 2% Christians

A Chief Commissioner's Province is administered by the Governor-General acting, to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion. The chief difference between a presidency and an ordinary governor's province is that while in the former the Governors are appointed by the Crown usually from men of high rank and administrative experience in Great Britain, in the latter they are appointed by the Crown in consultation with the Governor-General usually from distinguished members of the Indian Civil Service. The salary of Presidency Governors is higher than that of those of the other provinces and they have also more personal staff at their disposal.

In addition to this, the presidency Governments enjoy the privilege of direct correspondence with the Secretary of State on certain matters and can appeal to him against the orders of the Government of India and in case of short vacancies in the office of the Governor-General the Governor of a presidency acts as such during the Governor-General's absence.

## 2 Bicameral Legislature.

The Act provides that in every Governor's Province there is to be a provincial legislature which is to consist of His Majesty, represented by the Governor and

(a) in the Provinces of Madras, Bombay, Bengal,

the United Provinces, Bihar and Assam, two chambers  
(b) in other provinces, one chamber

Thus in 6 out of the 11 Governor's provinces there will be a second chamber, to be known as the Legislative Council, while the lower chamber will be called the Legislative Assembly. Where there is only one chamber, it is to be known as the Legislative Assembly.

The Act, however, provides that the second chambers may be abolished after 10 years. A second chamber is intended to check the hasty, rash and ill-considered legislation which may be passed in strong passion and excitement in the lower house. It is meant to restrain such tendencies and to compel careful consideration of legislative projects. Secondly, it interposes delay between the introduction and final adoption of a measure. A third advantage of the bicameral system is that it affords a convenient means of giving representation to special interests or classes in the state, particularly to the aristocratic portion of the society. In India, however, bicameral legislature in the provinces was considered unnecessary by the Montague-Chelmsford Report and public opinion too is to some extent opposed to the introduction of bicameral system in the provinces as it often causes delay in legislation, proves over-conservative in its tendencies and may obstruct any legislation threatening the interests which might be represented in the upper house.

### 3. Legislative Councils.

Legislative councils are to be permanent bodies not subject to dissolution, but, as near as may be, one-third of their members are to retire every third year. The normal period of membership, therefore, is nine years. A table of distribution of seats to various

provinces and communities in the Legislative Councils is set out on the next page. Legislative Councils are almost elected but as they are smaller bodies it has been found impossible to provide in them for the exact equivalent of all the interests in the Provinces. The Act, therefore, makes provision for the inclusion of a few seats to be filled in by nomination by the Governor at his discretion. This is accordingly meant for the purpose of redressing any possible inequality or to secure some representation to women. The representation by the method of communal electorate is adopted. Franchise qualification is rather high and the electorate is small.

#### 4 Legislative Assemblies.

The Legislative Assemblies are purely elected bodies. A table of the distribution of seats for the various communities and provinces is set out on the last page. Representation in the Legislative Assemblies is based mainly on the allocation of seats to various communities and special interests. Thus, as in the case of the Federal Legislature, there will be separate electorate for the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European and Women communities, besides the seats reserved for commerce, landholder, labour and university.

Every Legislative Assembly, unless sooner dissolved, shall continue for 5 years from the date of its first sitting. Under the India and Burma (Postponement of Elections) Act 1941, their term has been extended till after the duration of the war period. The Governor may summon, prorogue or dissolve the Legislative Assembly.

The franchise is calculated to extend very widely as compared with the number of voters under the Montagu-Chelmsford Reforms. Under the new Act

## TABLE OF SEATS

*Provincial Legislative Councils*

1. Provinces	2. Total of Seats	3. General Seats	4. Muham- madan Seats	5. European Seats	6. Indian Chri- stian Seats	7. Seats to be filled by Legislative Assembly	8. Seats to be filled by Governor
Madras	{ Not less than 54 Not more than 56 }	35	7	1	8	.	{ Not less than 8 Not more than 10 }
Bombay	{ Not less than 29 Not more than 80 }	20	5	1	.	.	{ Not less than 8 Not more than 4 }
Bengal	{ Not less than 68 Not more than 65 }	10	17	8	.	27	{ Not less than 6 Not more than 8 }
United Provinces	{ Not less than 58 Not more than 60 }	34	17	1	.	.	{ Not less than 6 Not more than 8 }
Bihar	{ Not less than 29 Not more than 30 }	9	4	1	.	12	{ Not less than 8 Not more than 4 }
Assam	{ Not less than 21 Not more than 22 }	10	6	2	.	.	{ Not less than 8 Not more than 4 }

## ASSEMBLY HANDBOOK

TABLE OF SEATS  
Provincial Legislative Assemblies

Province	2.	Seats for Women																
		General Seats																
		8	4	6	7	8	9	10	11	12	13	14	15	16	17	18	19	
Total Seats	215	146	General Seats reserved for Scheduled Castes	Seats for representatives of backward areas and tribes	Sikh Seats.	Muhammadan Seats	Anglo-Indian Seats	European Seats	Indian Christian Seats	Seats for representatives of Commerce, Industry, mining & planting	Landholders' Seats	University Seats	Seats for representatives of labour	General	Sikh	Muhammadan	Anglo-Indian	Indian Christian
Madras	175	114	15	1		29	2	3	3	6	6	1	6	6	1	1		
Bombay	250	78	20			117	8	11	2	19	5	2	7	6	2	2		
United Provinces	228	140	20			64	1	2	2	3	6	1	3	4	1	2		
Punjab	175	42	8		31	84	1	1	2	4	5	1	3	4	1	2		
Bihar	162	86	15	7		89	1	2	1	4	4	1	8	3	1	2		
C P & Berar	112	84	20	1		14	1	1	1	2	4	1	2	1				
Assam	108	47	7	9		34	1	1	1	11	8	1	4	3				
N.W.F. Province	50	9			3	86			1	1	2		1	1				
Orissa	60	44	6	6		33	2		1	2	2		1	2				
Sind	60	18									2		1	1				

\* In Bombay seven of the general seats shall be reserved for Marathas

In the Punjab one of the Landholders' seats shall be a seat to be filled by a Tumandar

In Assam and Orissa the seats reserved for women shall be non-communal seats

a male electorate of about 2,80,00,000 and a female electorate of 60,00,000 was anticipated. This comes to about 14% of the total population of British India as against 3% under the Montague-Chelmsford Reforms. The franchise thus is estimated to be 27% of the adult population and 43% of the adult male population.

Section 70 of the Government of India Act 1935 provides that if a person sits or votes as a member of a Legislative Assembly or a Legislative Council when he is not qualified or is disqualified for membership thereof, or when he is prohibited from so doing by the provisions of subsection (3) of Section 69 of the Act, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the province.

If a member is absent from the meeting of the chamber for 60 days without the permission of the Chamber, the Chamber may declare his seat to be vacant. A member may resign his seat to the Governor.

The Governor is not a member of any of the houses of the provincial legislature but he has a right to address or send a message to either chamber of the Provincial legislature or a Joint sitting thereof, and for that purpose may require the attendance of the members.

Every minister or Advocate-General has a right to speak and to take part in any chamber but he cannot vote unless he is a member of any of the houses.

The Legislative Council and the Legislative Assembly are to choose from amongst their members respectively a President and a Speaker to preside over these chambers. A member holding the office of a president or that of a Speaker is to vacate his office if he ceases to be a member of the chamber over which he presides. He may resign his office to the



Governor or may be removed on a vote of no-confidence from the house, for which 14 days' notice is required. Their salaries are fixed by provincial acts.

The quorum of each house is one-sixth of the total strength of the house, and all questions are to be decided by a majority of votes of the members present and voting in the house. The Speaker or the President has a right to vote only in case of equality of votes.

A chamber of a provincial legislature has power to act notwithstanding any vacancy in the membership thereof, and any proceeding in a provincial legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled to sit or vote has so participated in the proceedings of the house.

## 5. Restrictions on Legislative Powers.

Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, a Chamber of a Provincial Legislature any bill or amendment which—

(a) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India or

(b) repeals, amends, or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General or

(c) affects matters in respects of which the Governor-General is by or under the Act, required to act in his discretion, or

(d) affects the procedure for criminal proceedings in which European British subjects are concerned.

Similarly, unless the Governor of a province gives his previous sanction, no bill or amendment

may be introduced or, moved by any house of provincial legislature which (1) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor, or (2) repeals amends or affects any act relating to any police force

It may, however, be noted that the grant of such prior sanction to introduce a bill does not in any way fetter the power of the Governor to refuse assent or reserve any bill, and, on the other hand, the omission of such sanction does not invalidate the act in case it has duly received the assent of the Governor

No provincial legislature can make a law affecting the sovereignty of Parliament or the suzerainty of the Crown. Nor can they amend the Government of India Act or rules made thereunder, unless it is expressly provided. Provisions with regard to discrimination against British subjects or British commercial interests are the same as in the case of the Federal Legislature

## 6. Legislative Powers of the Governor

The Governor has got special powers to promulgate ordinances where any such necessity arises. There will be 2 kinds of ordinances—one made on the Governor's own responsibility and the other on the advice of the ministers. The Governor can also enact laws subject to certain conditions. Section 90 of the Government of India Act 1935 provides that if at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by

message to the Chamber or Chambers of the Legislature explain the 'circumstances which in his opinion render legislation essential, and either—

(a) enact forthwith as a Governor's Act a Bill containing such provision as he considers necessary, or

(b) attach to his message a draft of the Bill which he considers necessary

Where the Governor takes such action as is mentioned in (b) above he may, at any time after the expiration of one month, enact as a Governor's Act the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein

## **7. Chief Commissioner's Provinces.**

The Chief Commissioner's provinces are directly under the administration of the Governor-General acting through a Chief Commissioner appointed in his discretion. The Federal Legislature has full authority over them except for British Beluchistan where the Governor-General shall act at his discretion, and may make regulations, if necessary. Until other provision is made by His Majesty in Council, the constitution, powers and functions of the Coorg Legislative Council and the arrangements with respect of revenues collected in Coorg and expenses in respect of Coorg, shall remain unchanged.

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## CHAPTER VII.

## ELECTION TO THE LEGISLATURES

*But, perhaps above all, it (Parliamentary Democracy) implies a body of electors, individually alert, intelligent and informed and so organised as faithfully to reflect the will of the whole community'*

*Marriatt.*

## 1. The Voter and the Candidate.

With the wide extension of franchise and almost wholly elected legislatures under the new constitution, the law and procedure of elections are bound to arouse great interest amongst the voters as well as amongst the candidates. The word 'election' is derived from a Latin word *Electio* meaning the act of selecting one or more from others. In common use generally election means choosing one or more in a prescribed manner out of many by a distinctly defined body as their representative in a body politic. Elections are, therefore, a distinct recognition of the democratic principle, and choosing one to represent many is only a simple device to save time, worry, expense which are bound to arise if all the members of the body politic form a deliberative assembly.

For the sake of convenience each province is divided into constituencies, and each constituency, generally speaking, chooses one member. In the case of the provincial elections under the new constitution these constituencies have been detailed in the Government of India (Provincial Legislative Assemblies and Provincial Legislative Councils) order, 1936. These include territorial as also non-territorial constituencies, such as Commerce, Industry, Landholders, Labour and University constituencies.

## 2. Qualifications Of Voters

Much earlier to the election, a provisional electoral roll i. e. a register of persons eligible to vote is prepared for each constituency. The qualifications for these voters differ from province to province and are detailed in the 6th Schedule to the Government of India Act 1935. But generally the franchise qualification is based on property which may be gauged by land revenue, by various conditions of agricultural tenancy, by assessment of income tax and in the case of towns by the amount of rent paid. Details of these are given below. A voter must belong to the community for which the electoral roll is prepared, i. e. general, Muslims, Christians, Europeans, Anglo-Indians, Sikhs etc. He should be of sound mind and a British subject, not guilty of election offences, or undergoing transportation, penal servitude or imprisonment. A ruler or the subject of an Indian state may also vote under certain conditions laid down in the Act. No person may vote at a general election in more than one territorial constituency, but an exception is made in the case of women where special territorial constituencies exist for them.

### Council Of State

The qualifications required for a person to enlist his or her name in the electoral roll of the council of state are given in the Council of State Electoral Rules. The following provisions relate to United Provinces but provision regarding other provinces are more or less identical.

- (a) A person should have attained the age of 21,
- (b) He should be a resident of the constituency in which he desires to have his name enlisted. A person is deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling-house therein.

ready for occupation in which he occasionally dwells, and

(c) He should in addition have one of the following qualifications

I . *Land Revenue Payment* , Rs. 5,000 per annum and above.

II — *Income Tax Assessment* , Incomes of Rs 10,000 or more

III — *Possession of Title* , Shams-ul-Ulemas and Mahamahopadhyayas

IV — *Miscellaneous* (a) Non-official members or ex-members of either Chamber of the Central or the Provincial Legislature (b) Non-official Chairmen or ex-Chairmen or Vice-Chairmen of Municipal Boards and District Boards in the United Provinces (c) Fellows, ex-Fellows, Honorary Fellows, Honorary ex-Fellows or members of the Senate or Court of any University in British India, (d) Non-official Presidents or Vice-Presidents of the Co-operative Central Societies. (e) Presidents or ex-Presidents of Chambers of Commerce in the United Provinces

### Central Legislative Assembly

The qualifications required for a person to enlist his or her name in the electoral roll of the central legislative Assembly are given in the Central Legislative Assembly Electoral Rules. The following provisions relate to United Provinces in those rules but provisions regarding other provinces are, more or less, identical

(a) A person should have attained the age of 21 years, and (b) He should be a resident of the constituency in order that his name may be enrolled. A person is deemed to be resident in any area if he ordinarily lives in that area or maintains a dwelling house therein ready for occupation in which he

occasionally dwells, and (c) He should in addition possess one of the following qualifications

I *Land Revenue Payment*, Rs. 150 per annum and above In the hill *pattis* of Kumaun—Rs 25 per annum and above or ownership of a fee-simple estate.

II. *Agricultural Rent* Rs 150 per annum and above. In the hill *pattis* of Kumaun—Rs 25 per annum and above

III —*Income Tax assessment*, Any income assessed to income tax

IV.—*Assessment to Municipal Tax*, Incomes of Rs 1,000 per annum or more

V —*House Rent*, Rs 15 per mensem or more

### Legislative Councils.

' The following qualifications ' relate only to the United Provinces, but other provinces too have more or less identical Provisions

A voter to the U P Legislative Council should be (1) 21 years of age (2) be a resident in the constituency i e he must be a resident thereof or must maintain a dwelling house therein ready for occupation in which he occasionally dwells, and (3) he must have one of the following qualifications

I —*Land Revenue Payment*, Rs 1,000 per annum and above In the case of members of the Scheduled Castes—Rs 200 per annum and above In the hill *pattis* of Kumaun—Rs 100 per annum and above

II —*Agricultural Rent*, Rs 1,500 per annum and above In the case of members of the Scheduled Castes—Rs. 500 per annum and above In the hill *pattis* of Kumaun—Rs 100 per annum and above.

*For Under-proprietors in Oudh..*

Members of Scheduled Castes—Rs. 200 per annum and above Others Rs 1,000 per annum and above.

*III—Income-tax and assessment,* Income of Rs. 4,000 and more. In the case of members of Scheduled Castes—Rs. 2,000 and more

*IV—Possession of Titles,* Titles not lower in rank than Diwan Bahadur, Rai Bahadur, Rao Bahadur, Sardar Bahadur, or Khan Bahadur

In the case of members of Scheduled Castes—any title conferred by the Governor-General of India

*V—Award of Pensions (Civil, Naval, Military, Air Force or Political,)* Rs 200 per month or more

*VI—Miscellaneous, (a)* Non-official members of ex-members of any Legislature in British India

(b) Members or ex-members of an executive Council or Ministers or ex-Ministers in British India

(c) Non-official Chairmen or ex-Chairmen of Municipal Boards and District Boards in the United Provinces

(d) Chancellors, ex-Chancellors, Pro-Chancellors, ex-Pro-Chancellors, Vice-Chancellors, ex-Vice-Chancellors, Pro-vice-Chancellors, Ex-pro-vice-Chancellors, Fellows, ex-Fellows, Honorary Fellows, ex-Honorary Fellows, Members or ex-Members of a Senate or Court of and University in India

(e) Judges, or ex-Judges of the Federal Court, or any High or Chief Court, or Judicial Commissioner's Court, in British India

(f) Mayors, ex-Mayors, Sheriffs, or ex-Sheriffs of Madras, Calcutta or Bombay

(g) Non-official Presidents or ex-Presidents of the Central Co-operative Societies

*VII—Special Qualifications for Women, Wives of persons—*

(a) Assessed to income tax on incomes of Rs. 10,000 and more.



(b) Paying land revenue of Rs 5,000 per annum or more.

(c) Holding any title not lower than Diwan Bahadur, Sardar Bahadur, Khan Bahadur, Rai Bahadur or Rao Bahadur

(d) Who have been awarded a pension (civil naval, military, air force or political) of Rs. 250 per mensem or more

### Provincial Legislative Assemblies.

A voter of the United Province Legislative Assembly must be (1) 21 years of age (2) be a resident in the constituency i e must be a resident thereof or must maintain a dwelling house therein ready for occupation in which he occasionally dwells and

(3) he must have one of the following qualifications —

*I—Land Revenue Payment,* Rs 5 per annum and above In the hill *pattis* of Kumaun—Ownership of a fee-simple estate or assessment of land revenue or cesses of any amount

*II—Agricultural Rent,* Rs 10 per annum and above

In the hill *pattis* of Kumaon—A *khaikar*

*For Under-proprietors in Oudh,* Rs 5 per annum and above

*III—Income Tax assessment,* Any income assessed to income tax

*IV—Assessment of Municipal Tax,* Incomes of Rs 150 per annum or more

*V—House Rent,* Rs. 2 per mensem or more. In the case of members of Scheduled Castes—Rs 1 per mensem or more.

*VI.—Educational Qualification,* Having passed Class IV. examination of any School, Anglo-Vernacular

or Hindustani, or an examination regarded as equivalent thereto.

*VII—Military Service Qualification*, Being a retired, pensioned or discharged member of His Majesty's naval, military or air forces.

*VIII—Shilpkar in hill patts of Kumaun*, Representative of a Shilpkar family

*IX—Special Qualifications for Women*, 1. Pensioned widows, or pensioned mothers of ex-members of His Majesty's naval, military or air forces

2 Literacy

3 Wives of persons—

(a) Assessed to income tax on any income

(b) Paying land revenue of Rs 25 per annum or over in the hill *patts* of Kumaun, owning a fee-simple estate or being assessed to land revenue or cesses of any amount

(c) Paying agricultural rent of Rs 50 per annum or more in the hill *patts* of Kumaun, being a Khaikar.

(d) Who are permanent tenure holders or fixed rate tenants in Agra or underproprietors or occupancy tenants in Oudh and pay a rent of Rs 25 per annum or more

(e) Owning a house of Rs 3 per mensem or more rent or paying that house rent

(f) Paying municipal tax on incomes of Rs 200 per annum or more.

(g) Who are retired, pensioned or discharged members of His Majesty's naval, military or air forces.

Qualifications in other Provinces are more or less the same.

### 3. The Electoral Roll.

**The following Table Shows the Number and Distribution of the Electorate in British India in 1942**

Provinces of British India	Population (according to the Census of 1931)	Present Electorate for Legislative Assembly.
Assam	8,622,000	815,000
Bengal	50,114,000	6,695,000
Bihar	32,372,000	2,412,000
Bombay	18,044,000	2,412,000
Central Provinces and Berar	15,323,000	1,741,000
Madras	45,326,000	6,437,000
N. W. Frontier	2,425,000	247,000
Orissa	6,905,000	520,000
Punjab	23,581,000	2,686,000
Sind	3,887,000	639,000
United Provinces	48,409,000	5,335,000

• N. B.—Electorate for Central Legislative Assembly at the election, held in 1934, was 1,416,000.

After the preparation and publication of provisional electoral rolls, a person who claims to be entitled to be registered and who is either not registered or is incorrectly registered may claim to be registered or to be registered correctly by sending to the Returning Officer a claim to that effect within the prescribed date. Similarly, notices of objections to the registration of any person whose name appears in the electoral list must be sent to the Returning Officer within the prescribed time. The claims and objections are then considered and claimants and objectors are given an opportunity of making good their cause. After the decision of the Officer, necessary corrections are made in those rolls and they are then published

finally This is the final list of the voters' in a constituency

The Governor or Governor-General, as the case may be, then by notification fixes the various dates in connection with election. Nominations are called for and scrutinised, on a date so fixed. The requisite qualifications for nomination to the federal legislature are that the candidate proposed must be 30 years for the upper house and 25 for the lower house, a British subject, or the ruler or a subject of an Indian State, and of sound mind. He should not be disqualified on account of election offences or by reason of imprisonment or transportation for criminal offences. Persons holding office of profit under the Crown are also disqualified but permanent servants employed in Indian States are not so disqualified. Similar provisions have been made for the provincial legislature in Section 69 of the Act. Ministers, Presidents, Deputy President Speaker, Deputy Speaker, Parliamentary Secretaries are not considered as holding office of profit under the Crown for the purpose of election<sup>1</sup>. The nomination is made in writing and the candidate is proposed and seconded by a registered elector of the constituency.

#### 4. The Procedure at Elections.

On or before the date appointed for the nomination each candidate must deposit or cause to be deposited with the Returning Officer a fixed sum, varying in case of various elections, without which no nomination is considered valid.

This deposit in the case of Central Assembly is Rs 500, in the case of U. P. Council Rs. 500 and

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<sup>1</sup> U P Government notification no. 2485-R dated 27 7.36.

Rs. 250 for the Legislative Assembly.<sup>1</sup> In the case of candidates of depressed classes and labour, however, it is only Rs 50. The deposit may be returned if a candidate withdraws his candidature within the prescribed time or if his nomination is refused or if he dies before the commencement of the poll. But if a candidate is not elected and if the number of votes polled by him does not exceed a certain prescribed number, usually one-eighth of the total votes polled, the deposit is forfeited to the Government. The object of this is to discourage frivolous candidates.

Detailed procedure is given in the Government of India (Provincial Elections) (Corrupt Practices and Election Petitions) Order<sup>2</sup> 1936 and the rules made by the Provincial Governments under the Act for the conduct of elections. On nomination, a candidate is accordingly required within the prescribed period and in the prescribed manner to appoint either himself or some other person to be his election agent. No person can be so appointed who for the time being is disqualified to vote or stand as a candidate for election. Any revocation of the appointment of an election agent is to be signed by the candidate and similarly the candidate is required to give notice to the Returning Officer of the new election agent. The election agent is required to keep separate and regular books of account, and also to enter therein such particulars of expenditure in connection with the election as may be prescribed.

A date is already fixed for polls and officers to preside at polling stations are appointed. In case the number of candidates and the number of vacancies are

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1 U. Legislative Assembly and Legislative Council (conduct of Election and Election petition) Rules 1936 published in the U. P. Gazette of 24.9.36

2. Similar order, for the election to the Federal legislature was not yet been issued.

the same, no recording of votes is necessary and the candidate or candidates are declared elected. But where there are more candidates than the number of vacancies, a poll takes place on the fixed date and votes are recorded. The presiding officer maintains order at the polling station and sees that the election is fairly conducted. He regulates the number of voters to be admitted. After the polls, the presiding officer seals with his own seal and the seal of such candidates or agents as may desire to affix their seal, each ballot box used in the station. On a later date fixed for the purpose, count takes place when "spoilt" ballot papers are eliminated and only the valid ones are taken into account. Votes are counted by, or under the supervision of the Returning Officer and each candidate and either his election agent or one representative of each candidate authorised in writing by the candidate shall have a right to be present at the time of counting. The candidates or candidate getting the highest number of votes are or is declared elected. If a candidate is elected to two houses, he should declare in which house he would like to remain.

After the election a return of the election expenses is to be signed both by the election agent and the candidate and is to be submitted to the officer accompanied by a declaration in the prescribed form on oath before a magistrate. But where a candidate is, owing to absence from India, unable to sign the return of election expenses and to make the required declaration, the return may be signed and lodged by the election agent and may be accompanied by a declaration of the election agent only but the candidate must within fourteen days after his return to India cause to be lodged with the Returning Officer a declaration made on oath before a Magistrate in such form as may be prescribed. Non-submission of election expenses

within the prescribed period disqualifies a member to sit in the house

In each province provision may be made, by an act of the provincial legislature or by rules, fixing the maximum scales of election expenses at election and the number and description of persons who may be employed for payment in connection with elections. The maximum scale of expenses which shall apply to elections of any candidates to the United Provinces Legislative Assembly is Rs 20,000 for rural constituencies, Rs 15,000 for the urban, European, Anglo-Indian and Christians constituencies and sums varying from 1,000 to 10,000 for other constituencies. For the United Provinces Legislative Council the amount so fixed is Rs 10,000 for rural and Rs 8000 for urban constituencies

### **5. Election of 'Depressed Classes.**

In the case of the Depressed Classes which are enumerated in the Government of India (Scheduled Castes) Order 1936 published in the Gazette of India of the 6th June, 1936, the system of election would, however, be slightly different. All the members of the Depressed Classes registered in the general electoral roll in a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats, by the method of single transferable vote: the four persons getting the highest number of votes in such primary election shall be candidates for election in the general electorate and out of these four, the one securing the highest number of votes would be declared elected:

### **6. Special Facilities for War Services.**

In accordance with the Indian Franchise Act,

1945, persons who have been engaged in war service, during the period commencing from September 3, 1939 and ending on such date as may be notified, may apply, *either before the termination of such service* or not later than 12 months from the termination thereof or from October 24, 1945\*, whichever occurs last, to the revising authorities of their constituencies for the inclusion of their names in the electoral rolls of either chamber of the Central or the Provincial Legislature provided they possess the necessary franchise qualifications. The franchise qualifications has been extended by this Act—

(a) in the case of United Provinces Legislative Assembly to retired, pensioned or discharged (for reason other than disciplinary) members of the Naval and Air forces (besides the regular Military forces), their wives, pensioned widows and pensioned mothers, and

(b) in the case of United Provinces Legislative Council to the recipients of Naval and Air forces pensions (besides the recipients of Military pensions) and their wives provided the amount of such pensions is not less than Rs 250 per mensem

Such applications should be in the prescribed form with the usual particulars in respect of the applicant, *viz*, name, father's name, address in full, rank and designation of service, and *must* be accompanied by a duly certified copy of the proof of such service. For the purposes of these applications, a person shall be entitled to be included in an electoral roll if he would be so entitled if the roll were being revised at or by reference to the date of his application. No Court fee or other charge will be levied on these applications. If it appears that a person would have

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\*Date of the passing of the Act.



satisfied a residence qualification but for his absence on war service, that qualification shall be treated as satisfied in his case

“War service means—

(a) service of any kind in a unit or formation liable for service overseas or in an operation area

(b) service in India, under Military munitions, or stores authorities with a liability to serve overseas or in an operational area

(c) all other services involving subjection to Naval, Military or Air force law

(d) a period of training with a military unit or for involving liability to serve overseas or in an operational area

(e) service in any Civil Defence organization specified in this behalf by the Government,

(f) (i) any service connected with the prosecution of the War which a person is required to undertake by competent authority under the provisions of any law for the time being in force and

(ii) such other service as may hereafter be declared as war service

## 7. Election Petition.

No elections can be called in question except by an election petition presented to the Governor in accordance with the prescribed rules. These rules may be determined by acts of provincial legislatures or rules made by the Governor in this behalf. A petition must be presented by the candidate or by the elector or by an officer empowered in that behalf by the Governor under certain conditions. The petitioner

NOTES.—(1) Only whole-time service of any of the kinds specified above rendered after September 3, 1939 will be recognised as War service

(2) Service rendered by persons holding Emergency Commission in forces of Indian States will count as “War Service”

deposits a certain prescribed amount as security for the cost of petition. In the United Provinces this amount is fixed for the Legislative Council election petitions at Rs 1000 and for the Legislative Assembly election petition at Rs 250

A petitioner may, if he so desires, in addition to calling in question the election of the returned candidate, claim a declaration that he himself has been duly elected, but such a declaration can only be claimed on one or other of the following grounds—

(a) that in fact the petitioner received a majority of the valid votes or

(b) that but for votes obtained for the returned candidate by corrupt practices, the petitioner would have obtained a majority of the valid votes

The Governor may exercising his individual judgment, dismiss a petition for non-compliance with the prescribed rules. But if the petition is in order he shall appoint as commissioners for the trial of the petition three persons who are or have been or are eligible to be appointed, judges of a High Court, and shall appoint one of them to be its President. Where in respect of an election in a constituency more petitions than one are presented the Governor refers all those petitions to the same Commissioners, who may at their discretion inquire into the petitions either separately or in one or more groups, as they think fit

The Advocate-General of the provinces or some person acting under his instruction, may attend and may take such part therein as the Commissioners may direct

### 8. System of Single Transferable Vote.

It is argued that the existing method of election in India, which is the same as in Great Britain, does

not give true representation to popular opinion. Supposing four candidates contest a seat, A getting 15000 votes, B getting 14999, C 14500 and D 5501, A would be declared elected by a majority of 1 and would represent the opinion of all the voters including the 35000 who voted against him. Thus under this system of election, the results of the general elections are amazing distortions of the popular will. Taking for example the election in England in 1918, the coalition Government won 472 seats in the House of Commons against 130 won by the anti-coalition party a majority of nearly 4 to 1. But the coalition party had obtained only 52 per cent of the votes cast, against 48 per cent given to their opponents. Similarly in the election of 1922, the Conservatives obtained 347 seats in Parliament and a clear majority of 79 over others yet they polled only 38% over the votes cast. In the election of 1923, the Conservatives obtained almost the same percentage viz, 38 per cent, but they lost 90 seats and were placed in a minority of about 100. In 1924 the Conservatives got 415 seats with only 47% voting on their side. Similarly the subsequent elections proved that the proportion of votes cast and candidates returned to various parties widely differed.

The system of single transferable vote is often advocated to overcome this defect in the machinery of election. Under this system the existing single member constituencies will be grouped together into larger constituencies with 4 or 5 seats. Whatever the number of seats may be, each elector will have one vote only, but he would be entitled to indicate on the ballot paper the order of his preference amongst the candidates by numbering them 1,2,3,4,5 etc. If the candidate of his first preference did not require his vote, or is hopelessly out of the running, the vote would be transferred to his second preference, and if

need be to his 3rd and so on. Thus in no case would his vote be wasted. It would always help to return somebody. This system is used in India in the election to various committees of the legislatures and although it is a little complicated it has produced good result and has made representation more real.

## 9. Statutes and Rules regarding Elections in India.

There are several statutes and subsidiary legislations regarding election in India. A detailed list of them is given below for the convenience of readers.

(1) For Central Legislature The Council of State Electoral Rules and the Central Legislative Assembly Electoral Rules

(2) For the Provincial Legislatures —

(a) The Government of India Act, 1935,

(b) The Government of India (Provincial Legislative Assemblies) Order in Council, 1936

(c) The Government of India (Provincial Legislative Councils) Order in Council, 1936

(d) The Government of India (Scheduled castes) Order in Council, 1936

(e) The Government of India (Provincial Elections) (corrupt Practices and Election petitions) Order in Council 1936

(f) The Electoral Rules for Legislative Council of Provinces (framed by the Provincial Government) of the Province concerned.

(g) The Electoral Rules for the Legislative Assemblies of Provinces (framed by the Provincial Government of the Province concerned).

(h) The conduct of Elections' and Election petitions' Rules of the Legislative Council of the Province

(framed by the Provincial Government of the Province concerned)

(i) The conduct of Elections' and Election petitions' Rules of the Legislative Assembly of the Province (framed by the Provincial Government of the Province concerned)

(j) Government orders issued 'from time to time on the subject by the various Provincial Governments e g allowing part time officers to contest election, removing disqualifications, or issuing orders under powers conferred by Rules, orders or Act' on the subject

3 (a) The Indian Franchise Act 1945

(b) The Indian Legislature (war services)  
Electoral Rules 1945

(c) The Provincial Legislature (war services)  
Electoral Rules 1945 (made by each Provincial Government)

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**PART II.**  
**PARLIAMENTARY**  
‘CHAPTER VIII  
**PRIVILEGES OF MEMBERS**

*“What is said and done within the walls of  
Parliament cannot be enquired into a court of law”—*  
*Coleridge*

**1. Privileges defined**

In any Parliamentary body, privileges are necessary for the support of the authority and the proper exercise of power and functions entrusted to members by the constitution. In Wharton's Law Lexicon “Privilege” is defined as “an exemption from some duty, burden or attendance to which certain persons are entitled, from a supposition of law, that the stations they fill or the office they are engaged in, are such as require all their care and that therefore without this indulgence it would be impracticable to execute such office so advantageously as the public good requires”. In England some privileges rest solely upon conventions and customs of the Parliament, while a few have been derived by statute. There is however no exhaustive list of them.

Privileges are enjoyed by (a) the House collectively, (b) members of the Legislature individually, (c) officers of the chambers of Legislatures.

Sections 66 and 87 of Government of India Act contain certain specific provisions of privileges and section 71 in addition empowers the Provincial Legislature to define by an Act any other privileges. Section

66 (2) enables the Provincial Legislature to act notwithstanding any vacancy in the membership thereof and declares that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings. This is a privilege of the House collectively. Defects in its personnel do not invalidate its acts. Section 71 and item 12 of the Provincial Legislative list contains the most important provisions on the subject. The Section provides that

71. (1) Subject to the provisions of this Act and to rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in every Provincial Legislature and no member of the Legislature shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the legislature or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of a Chamber of such a Legislature of any report, paper, votes or proceedings

(2) In other respects the privileges of members of a chamber of a Provincial Legislature shall be such as may from time to time be defined by Act of the Provincial Legislature, and, until so defined shall be such as were immediately before the commencement of this Act enjoyed by members of the Legislative Council of the Province

(3) Nothing in any existing Indian Law, and notwithstanding anything in the foregoing provisions of the section, nothing in this Act, shall be construed as conferring or empowering any Legislature to confer on a Chamber thereof or on both Chambers sitting together or any committee or officer of the Legislature the status of a court or a punitive or disciplinary powers other than the power to remove or exclude persons infringing the rules or standing

orders or otherwise behaving in a disorderly manner

(4) Provision may be made by an Act of the Provincial Legislature for the punishment on conviction before a court of persons who refuse to give evidence or produce documents before a Committee of a Chamber when, duly required by the chairman of a Committee so to do

Provided that any such Act shall have effect subject to such rules for regulating the attendance before such committee of persons who are or have been in the service of the Crown in India and safeguarding confidential matter from disclosure as may be made by the Governor exercising his individual judgment

(5) The Provisions of subsection (1) and (2) of this section shall apply in relation to persons who by virtue of this Act have the right to speak in and otherwise take part in the proceedings of Chamber as they apply in relation to members of the Legislatures

Section 87, on the other hand, provides that

87—(1) The validity of any proceedings in a Provincial Legislature shall not be called in question on the ground of any alleged irregularity of procedure

(2) No officer or other member of a Provincial Legislature in whom power are vested by or under this Act for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers "

## 2. Freedom from Arrest.

As for freedom from arrest Act 23 of 1925 provides.—

1. No person shall be liable to arrest or detention in prison under a civil process—



(a) if he is a member of either chamber of the Indian Legislature or of a Legislative Council constituted under the Government of India Act, during the continuance of any meeting of such chamber or council

(b) if he is a member of any committee of such Chamber or Council, during the continuance of any meeting of such committee,

(c) if he is a member of either chamber of the Indian legislature, during the continuance of a joint sitting of the Chambers, or of a meeting of a conference or joint committee of the Chambers of which he is a member and during the fourteen days before and after such meeting or sitting

2 A person released from detention under sub-section (1) shall, subject to the provisions of the said sub-section, be liable to re-arrest and to the further detention to which he would have been liable if he had not been released under the provisions of sub-section (1)

The Act exempts members of legislatures from serving as Jurors and assessors

### **.3. Freedom of Speech.**

Freedom of speech is another privilege indispensable for every law-making body "The fullest and most complete ventilation of every plan, object and purpose is," says Burquess; "necessary to wise and beneficial legislation. This could never be secured if the members should be under the restraints imposed by the law of slander and libel upon private character." There are three obvious reasons for freedom of speech in any legislature. Firstly without the right of persuasion, a minority cannot be satisfied with the decisions of the legislature or acquiesce in them as embodying

the deliberate and considered opinion of the majority, the right of persuasion implies freedom of speech. Secondly, free debate is an indispensable preliminary to a wise decision. Thirdly, if the legislature is to ventilate the grievances of the electorate, there should be complete freedom of speech, as no one would venture to complain of grievances unless there was perfect immunity in the presentation of those grievances.

As stated already, the Government of India Act provides that there shall be freedom of speech in the legislatures and no member shall be liable to any proceeding in any court in respect of any speech or vote given by him in the legislature or a committee thereof, and no person shall be liable in respect of the publication by or under the authority of a chamber of such legislature of any report, paper, votes or proceedings.

Some year ago a very interesting point arose in the Burma Legislative Council whether interpellations like speech and vote, were equally exempt from legal proceedings. The facts of the case were that Mr. U. Khin Maung, a member of the Burma Legislative Council asked a question, "Is the Government aware of gambling dens under the name of Chinese clubs and that opium and cocaine smuggling on a large scale is done by Mr. Aw Eu Wah of 59, 18th street?" Mr. Eu Wah thereupon brought a suit against Mr. Maung in the court of western sub-divisional magistrate Rangoon for defamation. The magistrate issued defamatory processes and the matter was finally referred to Mr. Justice Dunkley of the Rangoon High Court for revision. The real issue before the court was "when a member of the Burma Legislative Council asks question under rule 8 of the Legislative Council Rules and Section 4 of the Council Standing Orders,

is he entitled to absolute privilege in the same sense that no proceeding, can be taken against him in court." Standing order no 28 (3) of the Burma Legislative Council provided that a question shall not be asked if it contained a statement by a member, unless he had made himself responsible for the accuracy of the statement. On the other hand under Sub-section 7 of Section 72 (d) of the Government of India Act 1919 there were certain immunities for the members of the Council in respect of speech and vote in the house. His Lordship argued that freedom of speech to members was subject to Rules and Standing Orders, and secondly that immunity from legal proceeding was confined to "speech and vote" only and therefore the privilege did not extend to interpellations. But his Lordship realising the public importance of the question raised decided to refer the matter to the full bench who held the contrary view. Referring to the Standing Orders and Rules quoted above, the Chief Justice Sir Godman Roberts observed that the member is "responsible for the accuracy of the statement" only to the President. That enjoined upon a member of a course of conduct, and in the opinion of the Chief Justice it meant only this that he should give his assurance to the President, if need be, that he has checked the sources of his information. The case was therefore finally decided on 20th July, 1936 in favour of Mr Maung and a definite ruling was given that the members of the Council enjoyed absolute privilege in respect of questions also, as in the case of speech and vote, and that no proceedings can be taken against them in a law court in this behalf.

Another important point was recently raised whether the publication of the speeches in the legislature or extracts therefrom by non-official agencies possesses exemption from legal proceedings. A Hindi

newspaper of Allahabad was asked to deposit security by the United Provinces Government under Sub-section 3 of Section 7 of Act 23 of 1931, for printing a Hindi translation of the full text of the speech of Pandit Krishna Kant Malaviya made in the Assembly on the criminal law (Amendment) Bill. The question was raised in the Assembly and it was ruled by the President that such publication by newspapers did not enjoy immunity from legal proceedings. The position was reiterated by Sir Henry Crack in the Legislative Assembly on 12th October, 1936 that "Outside the house the speeches of members are not privileged."

#### 4. Breaches of privileges:

In 1933 it was held in the Central Legislative Assembly that a member, who gives to the press for publication questions or resolutions before they are admitted by the chair, commits a serious breach of the privilege of the House. In 1934 it was held in the same legislature that it was a Parliamentary offence to give publicity to reports of proceedings of the Select Committee until the report has been actually presented to the House. In the same year it was held that a newspaper committed a breach of privileges, if it published questions, resolutions or motions before they are admitted or officially published. Similarly to publish papers relating to a Bill before its introduction to refer to anything that happens in a Select Committee, save and except that which appears in the report of the Select Committee and to ask a question based on a newspaper report, are in Bengal considered to be a breach of privilege.

Attacks on the proceedings of the Legislature in press are also not tolerated. In 1938 the President of the Central Legislative Assembly gave the opinion that it is the inherent right of any Legislature to

defend itself against outside attacks, and it is perfectly open in a proper case for the House to table a substantive motion and pass a vote of censure or condemnation on the attack. In Bombay in 1928 the Hon'ble Sir Narain Chandravarkar, President expressed the opinion that it was competent to cause the editor of a offending newspaper to be brought before the bar of the House. He held the theory that such power was inherent in the House. In this Province also an occasion arose for the consideration of this question. A certain resolution had been disallowed by the Hon'ble Sir Michael Keane, President and there was a criticism for disallowing it with a suggestion that it had been disallowed under pressure of the Government. The then U. P. Council passed a motion amounting to a censure of the journal but the matter terminated with an apology from that journal. In Madras also a resolution resenting an attack on the President and a motion censuring a newspaper was once passed.

### 5. Disciplinary Powers.

The legislatures in India have power to remove or exclude persons infringing the rules or standing orders or otherwise behaving in a disorderly manner. A member may be promptly called to order 'for using unparliamentary expressions or for uttering treasonable, seditious, or defamatory words. But Indian legislatures have no power to imprison for contempt against its authority as the Speaker of the House of Commons possesses nor has it any judicial powers. In India the Chair can ask the offender against his authority to apologise if he is a member. If he is a stranger, he may do nothing beyond censoring from the chair the action of the offender and refusing a ticket of admission to him to the visitors gallery if he

applies for one. If the offender is connected with the press, the Chair can instruct the office not to give him any of the concessions or supply him with any information, shown or supplied to the press and he can also refuse a ticket of admission to the press gallery, if he applies for one. These powers were actually exercised in the case of the Amrit Bazar Patrika. The President of the Legislative Assembly cancelled the press gallery pass to its special representative and removed the paper from the list of approved newspapers, having taken exception to the editorial comments in the paper on the President's ruling given on 2nd September 1936 during the debate on the adjournment motion relating to the alleged abolition of the Tariff Board and on the statement on 4th September 1936 made in connection with the walk out of the Congress Party. The President in his letter to the Patrika held that the said comments "have exceeded the bounds of fair comments and constitute a malicious and scandalous libel reflecting on his character and contain accusations of partiality in the discharge of his duty as President."

### 6. Interference of Law Courts.

The story of a successful assertion of their privileges by the House of Commons forms one of the most absorbing chapters in the history of England's fight for freedom and India has no parallel to it. One of such privileges is the exclusive right of the House of Commons to regulate its own proceedings within its own walls without interference by any external agency e.g. the courts of law (Bradlaugh v. Hasset, 12 Q. B. D. 281). In India the position is not so well defined.

In 1924, in Bengal, when the Legislative Council had thrown out the demand for the salaries of minis-

steps during the detailed discussion of the grants and the Government later brought forward a supplementary demand for the same purpose, the opponents of the demand sought, by means of an application for a *Writ of mandamus* in the Calcutta High Court, to compel the President of the Bengal Legislative Council to disallow the motion on the ground that it was inadmissible under the Legislative Council Rules as they then stood. Though the application for *mandamus* was rejected by the High Court, such rejection was not on the ground that the court had no power to interfere with the rules and regulation made for the internal working of the Legislative Council or that the President's interpretation of the rules was beyond question in court of law (J. M. Sen Gupta Vrs. E. A. H. Cotton, I L R 51, Calcutta, 874). Similarly on the 3rd September 1928, at the time of the motion in the Madras Legislative Council for the election of the 7 representatives to confer with the Indian Statutory Commission, an application was made in the Madras High Court for a *Writ of Certiorari* preventing the President of the Legislative Council from admitting the motion or putting it to vote of the House. The pendency of the proceedings in the High Court was brought to the notice of the President, but the President pointed out that an application in the High Court need not interfere with the course of business in the Legislative Council and that the Council had a right to regulate its own proceedings.

The committee appointed by the Government of India on Constitutional Reforms presided over by the late Sir Alexander Muddiman recommended, in paragraph 91 of their report that the matter should be placed beyond doubt and that legislation should be undertaken either in England or in India barring the courts from premature interference with the internal

forms of the legislatures. The Government of India Act 1935 as already stated has made Provisions in Sections 41 and 87

## 7. Legislation regarding privileges in India.

In several Provinces of India e g Bengal, Punjab Bihar and Sind, legislation has been introduced to define powers and privileges of the Members of Legislatures But no province has perhaps as yet passed legislation on the subject The most extensive bill on the subject is that of Bengal The Bengal Assembly Powers and privileges Bill 1939 was introduced in the Assembly on 12th July 1939 A similar Bill regarding Legislative council of Bengal was introduced on 1st December 1939 But none of them have become law The main provisions of the Bengal legislative Assembly Bill are as follows

"In order that the legislative duties of a member may not be hampered in any way, the Bill provides that a member should not be liable to arrest, detention or imprisonment in any civil proceedings or under any civil process during Assembly session and for a period of two weeks before and after and that he should be exempt from personal appearance in any civil or revenue court during sessions and should also be exempt from liability to serve as jurors or assessors

The Government of India Act provides that a chamber of a Legislature may declare the seat of a member vacant, if he is absent without permission of the chamber, for the sixty days from all meetings If a member is therefore detained, convicted or imprisoned on a criminal charge or otherwise, compelling him to be absent from the sittings of the Assembly, it is necessary that the Assembly should have information of the fact and the Bill therefore makes neces-



any provision for such information being sent to the Assembly

It is not intended that beyond sending such informations, there should be any interference with the administration of the criminal law, but so long a member remains a member of a legislature, in which special interests apart from territorial representation, have been specially provided for, it is possible that a member's presence, even though he is under detention or imprisonment, may be necessary for the purpose of the Assembly and provision has therefore been made for bringing such member under proper escort before Mr speaker for such period as may be required for such special purposes and if considered necessary and desirable

It has also been provided that a member accused of a bailable offence should be given bail to enable him to attend to his legislative duties except on days his trial may be fixed

The Bill also provides for freedom of movement of a member within the province unless by virtue of the operation of the criminal law of the land, his movement is restricted in any manner

The Bill provides that Mr Speaker should be exempt from personal appearance in any court and unless convicted in due course of law should not be liable to be arrested, detained or imprisoned on any criminal process or in any criminal proceeding. This is obviously necessary so that the work of legislature may not be disorganised or paralysed. Exemption of certain class of persons from personal appearance in criminal courts is not without precedence in the law of this country.

The Bill provides that no civil or criminal process should be served within the Assembly House nor should such process served through Mr. Speaker

Salary and allowances of members as also of Mr. Speaker and the Ministers are necessary emoluments for the proper functioning of the Legislature and the Bill therefore provides that they should not be liable to attachment or sale, in execution of a decree.

Provision has been made for the summoning of witnesses by the Assembly and detailed provisions have been made for this purpose. While witnesses are made immune from any civil or criminal liability for their evidence, any refusal to attend or giving of false evidence is made a penal offence.

In order that there may not be any doubt as to legal liabilities of persons connected with the publications, by order of Mr. Speaker, of the Assembly papers, the Bill provides that no one should be liable in law for such publications.

Faithful and correct report of the proceedings of the Assembly or faithful and fair summary reports in newspapers, are made immune from any liability in law.

The Bill provides for certain penal offences and for legislative contempts and makes provision for special procedure and special rules of evidence for such offences. It is intended that no such case should be taken cognisance of by any court except on the complaint of Mr. Speaker who is also given power to withdraw such cases. These offences include bribery and acceptance of money in relation to legislative works.

Following the procedure in England, provision has been made for the constitution of a tribunal of High Court Judges to investigate into matters of urgent public importance, if so desired by a resolution of the Assembly. Momentous matters are likely to arise from time to time and a judicial enquiry is always the best method for proper enquiry and investi-

gations into such matters of public importance. The budget disclosures sometime back in England were referred to a tribunal of this nature. This Bill provides for exactly similar procedure in such circumstances.

Various other matters are also provided in the Bill arising out of privileges and for the proper functioning of the legislature."

### 8. Privileges Committee.

In India there has now grown a practice and in some provinces specific provision has been made in Procedure Rules to appoint a committee of privileges which looks into all matters of privileges referred to it by the House or by the Speaker. In September 1940, the Bengal Assembly privileges committee recommended

(1) That immediate steps be taken by Government to pass the Bengal Legislative Assembly Powers and Privileges Bill (1939) already introduced in the Assembly on the 12th July, 1939 by the Hon'ble Deputy Speaker into law

(2) That pending such legislation the following conventions be adopted, namely —

(i) if any member of the Assembly is arrested, detained, convicted or imprisoned on any criminal charge or otherwise, information of such arrest, detention, conviction or imprisonment together with the charges against such member shall forthwith be sent to Mr. Speaker by person or persons under whose authority or order the arrest, detention, conviction or imprisonment is effected,

(ii) if Mr. Speaker on information received as above or otherwise is of opinion and if he thinks necessary after consulting the wishes of the Assembly that the presence of a member who has been arrested,

detained, convicted or imprisoned is essential for the purpose of the proceedings of the Assembly or any Committee thereof, Mr Speaker shall inform the Provincial Government accordingly and the Provincial Government shall take necessary steps forthwith to bring such member or such escort as they may consider necessary or in such other manner as they may deem necessary before Speaker and such member may attend such meeting of the Assembly or any Committee thereof as the case may be on such day or days as may be required by Mr Speaker, provided that the Provincial Government may take such steps as they may consider fit for the custody of the member during the time the presence of such member is not necessary in the Assembly or the Committee thereof,

(iii) that member should be entitled to exercise all his rights and privileges as such as far as this is possible while in custody and

(iv) that such further privileges as may be agreed upon after discussions between Mr Speaker and the Minister in charge of the Department of Constitution and Elections may also be extended to a member who may be under arrest, detention, conviction or in prisonment

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## CHAPTER IX

### GENERAL PROCEDURE IN THE LEGISLATURE

*“Parliamentary procedure is often better index of the true balance of power than the written constitution”*

— Morgan

#### 1 · Parliamentary Procedure in India

In the previous chapters we discussed the functions, constitution and privileges of Indian legislatures. Our next step is to consider the laws, rules and conventions, devised for their orderly and efficient working, for without them, no representative institution can satisfactorily work. These rules and conventions for the conduct of business of a legislature are better known as parliamentary procedure.

In India representative institutions and responsible government are of recent growth, therefore, the knowledge of parliamentary procedure is not yet sufficiently wide spread and the rules of procedure are still a mystery to most people. They have very vague notions about them and not unoften think that they consist of arbitrary provisions and meaningless and unnecessary forms placing difficulty in the way of members exercising their rights. Although on a closer examination it will appear that the rules of procedure are far from being arbitrary or meaningless, and are mostly based on excellent reason and embody sound principles of justice, equity, fairness and good conscience.

The purpose of these rules is to establish a course of conduct by which every member of the house gets

a fair chance to participate in the proceedings and to arrange the business as to extract the maximum utility in the minimum time. Then the decision reached in the body must have been arrived after adequate debate conducted with freedom enough to permit useful contribution of ideas and opinions, and to exclude as far as practicable the untoward influence of preceptency or passion.

Last but not least, the purpose of these rules is to protect the rights of the minorities in the house. Whatever action may the house take but the minority must "have their say." The cry of The mistocles to Eurybiades was "strike, but hear me,"

## 2. Rules of Procedure.

There are rules for the guidance of the presiding officers. Under the Government of India Act 1919 the proceeding of the legislatures are regulated by the Act, rules made thereunder and the standing orders modelled on the practice prevalent in the House of Commons. Section 84 of the Government of India Act 1935 makes provision regarding the rules of procedure in the Provincial Legislature.

84. *Rules of procedure*—(1) A Chamber of a Provincial Legislature may make Rules for regulating, subject to the provisions of this Act, their procedure and the conduct of their business.

Provided that, as regards either a Legislative Assembly or a Legislative Council, the Governor shall in his discretion, after consultation with the speaker or the President, as the case may be, make rules—

(ii) for regulating the procedure of, and the conduct of business in, the chamber in relation to any matter which affects the discharge of his functions in so far as he is by or under this Act required to act in his discretion or to exercise his individual judgment,

(b) for securing the timely completion of financial business

(c) for prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked

(d) for prohibiting, save with the consent of the Governor in his discretion -

(1) the discussion of or the asking of questions on any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince or

(ii) the discussion, except in relation to estimates of expenditure, of or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area or

(iii) the discussion of, or the asking of questions on, the personal conduct of the Ruler of any Indian State or of a member of the ruling family thereof, and, if and in so far as any rule so made by the governor is inconsistent with any rule made by a chamber, the rule made by a governor shall prevail

(2) In a Province having a Legislative Council the Governor, after consultation with the Speaker and the President, may make rules as to the procedure with respect to joint sittings of, and communications between, the two Chambers

The said rules shall make such provision for the purposes specified in the proviso to the preceding subsection as the Governor in his discretion may think fit.

(3) Until rules are made under this section the

rules of procedure and standing orders in force immediately before the commencement of this Part of this Act with respect to the Legislative Council of the Province shall have effect in relation to the Legislature of the Province, subject to such modifications and adaptations as may be made therein by the Governor acting in his discretion

(4) At a joint sitting of two Chambers the President of the Legislative Council, or in his absence such person as may be determined by rules of procedure made under this section, shall preside

•85 *English to be used in Provincial Legislature*  
--All proceedings in the Legislature of a Province shall be conducted in the English language

Provided that the rules of procedure of the Chamber or Chambers, and the rules, if any, with respect to joint sittings, shall provide for enabling persons unacquainted, or not sufficiently acquainted with the English language to use another language

86 *Restrictions on discussion in the Legislature*  
(1) No discussion shall take place in a Provincial Legislature with respect to the conduct of any Judge of the Federal Court or of a High Court or in the discharge of his duties

In this sub-section the reference to a High Court shall be construed as including a reference to a court in a Federated State which is a High Court for any of the purposes of Part IX of this Act

(2) If the Governor in his discretion certifies that the discussion of a bill introduced or proposed to be introduced in the Provincial Legislature, or of any specified clause of a Bill, or of any amendment moved or proposed to be moved to a Bill, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Provincial, any part thereof, he may in his



discretion direct that no proceedings, or no further proceedings, shall be taken in relation to the Bill, clause or amendment and effect shall be given to the direction

Most of the Provinces in India have accordingly framed rules under this section of the Government of India Act

In addition to these Rules, there have grown a vast number of conventions and approved usages where the law is not clear. These conventions and usages have been detailed in the subsequent chapters under the relevant headings and Rulings

### 3. Meeting and Adjournment.

For the purpose of constituting a new House the Governor-General or Governor, 'as the case may be, by notification calls upon the constituencies to elect members in accordance with the electoral rules within such time, after the date of expiration or dissolution, as may be prescribed by such notification. The House is made complete by nominations if necessary under the Act. If any person having been elected or nominated subsequently becomes subject to any of the disabilities mentioned in the electoral rules, or if he refuses to make the oath or affirmation within the prescribed period, the Governor-General or Governor, by notification in the local Gazette declares his seat to be vacant

The Governor-General or Governor, as the case may be, then appoints the time and place for holding the session of the legislature. Usually the house meets at 11 a. m. But the Bombay and Punjab legislature meet at 2 p. m. and hold sittings till late in the night, similar to the House of Commons which generally meets at 2. 45 p. m. After the transaction of business the House is either dissolved, pro-

rogued or adjourned. A dissolution brings the existence of the house to an end. A prorogation brings the session of the house to an end and an adjournment brings about a cessation of the business for a period of hours, days or weeks.

When the house is prorogued all the pending notices are lapsed, except the notices of questions to which final replies have not been given. But a bill which has been introduced shall be carried over to the list of pending business of the next session. On the dissolution of the house every business before it lapses. The adjournment of the house takes place at the pleasure of the chair unaffected by the proceedings of the other house. Business pending at the time of the adjournment is taken up at the point at which it is dropped when the house meets again subject, of course, to rules and usage. Prorogation takes place by the exercise of the power by Governor General or Governor, as the case may be, as conferred on him by or under the Act. It ends the session of both the houses. The dissolution of a house may be affected either by an exercise of the power by the Governor General or Governor, conferred on him under the Act or by the efflux of time.

#### 4. Arrangement of Business.

When the house is about to sit the Governor-General or Governor, as the case may be, considering the business coming before the house allots as many days as in his opinion are sufficient for the non-official business and may allot different days for the disposal of different classes of such business, and that business shall have precedence on those days. On the other days only government business shall be taken up except with the permission of the Governor-General.

or Governor as the case may be, and the Secretary of the house arranges that business in such order as the Governor-General or Governor directs

On the 9th February, 1926, a non-official day, His Excellency the Commander-in-Chief desired to make a statement. The President of the Legislative Assembly observed "I understand that His Excellency the Commander-in-Chief desires to make some important pronouncement. Before I allow His Excellency an opportunity to make that statement, I desire to make it absolutely clear that this is one of the few days allotted by His Excellency the Viceroy for the purpose of non-official business, and if I allow this opportunity to His Excellency the Commander-in-Chief to make a pronouncement, which is really a part of official business, I do so with the consent of the house, and I hope the Government will not cite that as precedent in future."

The relative precedence of notices of bills and resolutions by non-official members is determined by ballot held in accordance with the procedure laid down by the rules. This may differ from province to province. In Central Legislative Assembly, Secretary not less than 17 days before each day allotted for the non-official business places in his office a numbered list. The list is kept open during the prescribed number of days during office hours when any member desiring to give notice of resolution or bill may have his name entered. The number is fixed by rules. These papers with numbers corresponding to those against which entries have been made on the numbered list are placed in a box and a clerk at hazard takes out from the box one of the papers and the Secretary who is always present calls out from the list the corresponding name which is then entered on the priority list. This procedure is repeated till all the numbers have been drawn. Priority on the list entitles a

member to have set down, in the order of his priority for the day with reference to which ballot is held, any bill or any resolution of which he has given notice required by the rules provided he specifies there and then such bills or resolutions

### 5. The Whips

In any Parliamentary system there is need for elaborate arrangement to keep the party vigilant and active. For this purpose there are usually four whips whose only duty is to see that the cabinet or his party gets the support of the members. The whips' duties are to inform the members when a division takes place on an important resolution, to send a forecast of the work that is intended to be done in the House, to arrange with the help of the whips of the other party, the programme of the business of the House to direct the members of his own party how to vote and to bring the members to the House when the actual voting takes place. "Without the constant presence and activity of the ministerial whips the wheels of government could not go on for a day, because the ministry would be exposed to the risk of casual defeats which destroy their credit and involve their resignation" (Bryce, American Commonwealth)

### 6. Seating Arrangement

In the House, as is invariably the case everywhere, to the right of the President or Speaker sit the Government members and their supporter. On the left and centre sit the opposition and independent groups. Leaders of parties and ex-ministers who are members of the opposition generally sit on the front benches opposite to the Government members but the first seat on the left is reserved for the Deputy Speaker or the Deputy President. Around the house on either

side run the lobbies, the "Ayes" lobby to the right of the Chair and "Noes" lobby to his left. As far as the inner seating arrangement, it is vested with the Chair and it has been the practice for the Chair to allot blocs of seats with desks to the various "parties" leaving it to the party organisations to allot the individual seat within the bloc to its individual members. The party which is numerically the largest is usually given the first bloc of seats on the left, the next being given to the second largest and so on. The Speaker determines the number which is necessary to a Party. In Bengal the party limit was fixed at a minimum of 25 members. This is the practice hitherto followed in both the houses of the Indian Legislature and the Provincial Legislatures.

The chambers in India have enough room to accommodate all the members of the existing house. It will be interesting to note that the capacity of the British House of Commons to accommodate is much less than the number of its members whose number is 615. "In a busy house some members might even have to stand. To retain a seat, during a sitting, a member must obtain from the attendant in the chamber a white card, which he places on a seat, to signify his intention of being present at the prayers. After prayers he puts the card into a slot behind the seat, by which he acquires a right to it throughout the day only. Absence of prayers forfeit such rights. In neither house of Parliament desks are provided to each member as is generally the case in overseas Parliament."

In the Canadian House of Commons members are provided with a seat and a desk to which is affixed a card with the name of the occupant, to whom it has been allotted. The location of seats is arranged by the whips and the leaders of various political parties. In

Australian Federal Parliament, however, seating arrangements are governed by standing orders and are similar to those of India. In the New Zealand Parliament the seating of members as a rule is arranged by the party whips. Should any difficulty arise, the standing orders provide that it shall be settled by Mr Speaker. Almost similar practice is followed in the House of Assembly of the Union of South Africa. In Natal and South West Africa seating of the members is arranged by the Clerk in consultation with the party leaders. In Ireland the Chairman looks after these arrangements.

### 7. List of Business.

At each day's meeting a printed list of the business for the day commonly known as agenda is prepared by the Secretary which is given to each and every member of the house and any other business not included in the list cannot be transacted except with the permission of the presiding officer. Copies of all the notices, bills, reports of select committees and other relevant papers are made available to the members. Non-official business set down for any day and not finished on that day cannot be set down for any subsequent day unless it has gained priority at the ballot held with reference to that day. Nor can an adjourned debate be resumed on a day allotted for non-official business except with the consent of those members who have obtained places in the ballot for that day.

### 8. Library of the Legislature.

It may seem out of place to mention in this small book, what appears to be a domestic matter concerning legislatures namely the library of the house. But its importance can only be felt when one sees the day to

day sittings of the house. discussing complicated matters of technical nature of which the members generally do not possess enough knowledge. Besides, nature teaches us the necessity of guiding our own action in the light of the experience of others in similar circumstances. A library of the legislature serves this purpose. It provides books on most branches of learning with which the legislators are concerned—constitutional, economic, commercial, and historical. An up-to-date catalogue and index guides a member to various subjects and the staff is ever ready to serve. Of course the value of a parliamentary library depends to a great extent on a competent staff having information on all topics concerning legislatures and willing to help the members who usually have little time for research and thorough study of the subject. A true librarian therefore is not a 'booklifter' but a philosopher and a guide to the reader in the wilderness of books. This however requires enough time and literature at the disposal of the library staff, who are usually men of literary habits and of high academic distinctions. And a true library is not a 'collection of books' for books are no better than dead bones unless they are stirred to life by a competent librarian. They must be selected, classified, catalogued, intelligibly displayed and brought to the notice of the members. They then become a living entity with wonderful potentialities for service during the discussions in the house. Besides the service rendered to the members a good library with a competent staff has the distinct advantage of limiting requests for information at question time for the government need not be troubled for facts and figures which are readily available from the library, with all time wasting and expense. Even if such questions are asked they may be referred to publications stocked in the library.

## CHAPTER X

### THE SPEAKER

*"I have neither eyes to see, nor tongue to speak in his place, but as the House is pleased to direct me whose servant I am here and I humbly beg your Majesty's pardon, that I cannot give any other answer than this, to what your Majesty is pleased to demand of me"*

*Speaker Lenthall to King Charles*  
(14-1-1641)

#### 1. Speaker's Authority

In the preceding chapter we discussed rules of procedure of the House. But the efficiency of all these depend on the good will of the members of the house and still more on the even-handed treatment of the officer enforcing them—namely the President or the Speaker. The term Speaker is borrowed from the House of Commons. His position is as old as that of the House itself and his title is derived from the fact that he alone had the right to speak for the House of Commons before the King. In those days the Speaker's chief function was to take petitions and resolutions from the House and lay them before the King. The House besought the King to make laws and the King made them if he was so inclined. The Speaker was then merely the spokesman of these numerous and sometimes unwelcome requests, hence his title.

There are two important conventions in Britain, namely, that so long as the Speaker is willing and able to serve as Speaker he should be continued in office, and that at the election from his constituency, he should be allowed an easy walk over, as Speaker



Gully pointed out in the historic election for Carlisle in 1895, "It is unfair to put a man disarmed in the middle of the ring and subject him to the condition of a contest. He cannot descend into the rough strife of the electoral battles and canvass for elections without impairing the independence and dignity of the Chair." But this convention has not been invariably followed even in Great Britain and there have been cases where the seat of the Speaker has been contested. In India, however, the institution of elected president has been in existence for too short a period to form any precedent on this question, but here too are instances where the president has been contested both in the constituency and in the House.

Subject to certain exceptions of a historic nature, the President or Speaker of various legislatures in India enjoy almost all the rights and privileges of the Speaker of the House of Commons. He represents the house and speaks on its behalf. The chair is the sole and final authority of all questions arising in the house and he only is to interpret the rules and if his conduct is to be impugned, it can only be impugned by a direct appeal to the House upon notice of motion properly given, when a straight issue would be laid before the House and an amendment be moved which shall test the judgment of the House. In no other manner and by no other authority could the ruling of the chair be subjected to any criticism or censure within the Assembly Chamber. Such indeed is the sanctity attached to the rulings of the chair by constitution and by convention."<sup>1</sup> Even in the house the conduct of the Chair cannot be questioned except by a substantive motion against him.<sup>2</sup> The

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1 Central L. A. D. dated 2-9-1929 page 109-112

2 Central L. A. D. dated 11-2-1935.

newspaper comments reflecting upon the impartiality of the Chair may be effectively dealt with by the Chair and the House.<sup>3</sup> It was ruled in the Legislative Assembly on 23rd September, 1921 that "Chamber building could not be used for any business other than that of the House without the sanction of the President" The chair is also the supreme authority within the precincts of the House and no protective measures could be put in force within the chamber precincts without his previous approval.

In the absence of the President or Speaker, the Deputy President or Deputy Speaker or Chairman occupies the chair, and he too is expected to remain neutral as long as he occupies the chair. While presiding he has similar powers and privileges as the President or Speaker and no appeal can be made from his decision to the President or Speaker, on the latter's resumption of the chair.

## 2 Speaker And Party Politics

As regards the neutral character of the speaker's office, the speaker in England ceases from the moment of his election to the chair to be a party man. His severance from party ties is indeed so complete that, after his election, the Speaker does not enter the portals of any political clubs of which he may happen to be a member.

In the United States of America and in France the position is however different. The speaker of the House of Representatives of the United States of America is a party man. He is a powerful figure. He is not only a presiding officer but a recognised

3 Central L. A. D. dated 15-2-26 p 1195; dated 14-9-25, 22 to 25 September, 1928 & 28-1-29.

4. Central L. A. D. dated 20-1-39.

5 Central L. A. D. dated 11-7-1923 p 4533-42 and page 18, 8 1924 page 1690.

leader of his party in the House. Before 1910 the speaker practically dominated the proceedings of the House. He was dubbed "Czar" and "autocrat". He appointed all committees, including the all-powerful committees on rules, of which he was a member. One of the American constitutionalists has explained his position as below

"The position of the Speaker of the House is both judicial and political. It is judicial in this, that the occupant of the Chair is at all times bound by and obedient to a code of rules prescribed for the government and control of the House, and in the execution of which he is but its organ and servant. It is at the same time political. In the very nature of things, he is expected in his position to look carefully to the interest of his party, and while he is to administer the affairs of his great office in a manner to best promote the public weal, it is not expected that he will fail to use all legitimate and proper methods to build up his party and fortify it against attack."

The position of the French speaker is more or less the same.

In India most of the presiding officers have preferred the convention of the House of Commons. Ever since 1925 when elected presidents first occupied the chair of various legislatures in India, they invariably adhered to that convention. Under the new constitution too in 1937, the Presidents and Speakers of the Provincial Legislative Councils and Legislative Assemblies, except the Speaker of the United Provinces Legislative Assembly, followed the footsteps of their predecessors. They accordingly severed all their connections from the party as soon as they were elevated to the chair and thus they were, no-party-men both inside and outside the House.

From 1939 onwards there were quick political

developments and the situation regarding their attitude after 1939 was not very clear and defined. The Congress ministries resigned offices in that year as a protest against India being made a participant in War without her consent. In many provinces, therefore, the constitution had to be suspended with the Governor assuming all powers to him under Section 93 of the Government of India Act 1935. Most of the Presidents and Speakers of these Provinces, however, continued to hold office under Section 65 (2) of the Act until immediately before the first meeting of the Assembly after the dissolution. The dissolution of the Provincial Legislative Assemblies took place only in 1945 with the result that such Presidents and Speakers continued to hold office upto 1946 when fresh elections are being conducted. During this period the country passed through several phases of national struggle initiated by the Congress Party. It is doubtful whether any of those Presidents and Speakers, most of whom originally belonged to the Congress Party, resigned their offices before they participated in that struggle.

In the case of the Speaker (Hon'ble Shri Purushottam Das Tandon) of the United Provinces Legislative Assembly, the position was however quite clear throughout. Soon after his elevation to the chair he declared that he did not believe in the convention set by the Speakers of the House of Commons. He felt that in the present political situation of the country it was absolutely necessary that the Speaker should be allowed to take active part in politics outside the House. Consistent with this declared policy he took part in party politics outside the House both before and during the period of the suspension of the constitution and actively participated in the national struggle that followed the resignation of Congress ministries.

in 1939, without resigning his office of Speaker. On October 1, 1937, defining his attitude regarding Speaker's participation in politics, he said —

"So far as my politics and my connections with the Congress party are concerned, my cards are all open and on the table. There is nothing to conceal about them. On the other day I was elected as speaker of this Assembly. I indicated that I was a Congressman and belonged to the Congress party. I regard it as part of my duty as a Congressman to advise the Congress party on matters connected with their work whenever it is necessary to do so. But this has never interfered and cannot interfere with my functions and duties as the Speaker of the Assembly. It is to my mind unthinkable that the party would even for a moment dream of influencing my action in matters relating to my duties as Speaker. In such matters my own conscience, unfettered and unhampered by any political association or political differences, is the sole judge. But if the unthinkable happens and the Congress executive ever wishes to direct me in regard to my work as the Speaker, that day my Speakership ends. I have not yet, I hope, in my life allowed the intervention of a 3rd party between myself and my conscience, and I expect that I am not likely to do so in future. He who wants to influence my action must first convert me and influence my opinion. To me my conscience is the voice of my God and that is the primary authority to which I bow. The second authority to which I bow in matters relating to this House is the House itself and not any of the parties composing it."

### 3. Speaker's Functions and Impartial Status

The functions of the Speaker or President (subsequently the term Speaker covers both) may be classi-

fied as twofold. He is the spokesman and representative of the House and he is the chairman of the meeting of members. The Presidential functions attached to his office as chairman of the House are, however, much more important in India.

His duties are mainly statutory and consist of interpreting and administering certain provisions of the Government of India Act and rules of the Assembly procedure made thereunder. Besides conducting meetings of the Assembly the Speaker has to do a lot of administrative work outside the House e.g. admissibility of questions, bills, resolutions, cut motions and amendments, preparation and printing of agenda, proceedings and journal, receiving notices and issuing summons, Assembly watch and ward, election of representatives of the Assembly on various bodies, issue of visitors passes—all forming part of Speaker's statutory obligations. In all these duties the Speaker has to be impartial and unbiassed. Even the Government of India Act, 1935, section 66 provides that the presiding officer has no right to vote except when there is equality (and that too in accordance with certain established practices and conventions). He knows no distinction amongst members and parties in the House and acts fairly and gives satisfaction all round.

#### 4. Speaker and his Department.

Assembly staff commonly known as his Department helps the Speaker in these duties and he has to depend on their efficiency, independence and reliability. The House of Commons has more or less an autonomous office under the control of the Speaker. So has the Union of South Africa. The underlying idea is that this staff should be responsible only to the Speaker who is ultimately responsible to the House.

and they should in no way be dependent on any party in the House for their subsistence. The Speaker must feel that he is getting independent and impartial co-operation from the staff and the staff must also feel that they are only to serve and further the interest of the House as a whole and that no political party in the House can help or harm them. This is the best convention for the smooth and satisfactory working of the office of any parliamentary body. In India, too, as early as 1926, the conference of the Presidents of various Legislatures passed a resolution to that effect. The Central Legislative Assembly too as early as 1926 passed a similar resolution and the Governor-General in his address to the Central Legislature in January 1929 accepted that principle with the result that the office of the Central Assembly is independent of the Executive Council and is now included in the portfolio of the Governor-General.

In most of the provinces, however, the status of the Department of legislature is not autonomous. In some Provinces the Speaker has no control over Assembly staff. In others, although he is head of Department, yet he occupies a subordinate position to Government. It is attached usually to the Legislative Department and the Speaker, as former's head, acts under instructions of the Government. All powers of direction, superintendence and control conferred by the Act are exercised by the Government, and the Speaker has simply to carry out the instructions of Government issued under those powers. It may be argued that, under the present constitution, Government is responsible to the Assembly and the Speaker can through the Assembly always set right any instruction which might appear unreasonable to him. But in actual working this system has threefold disadvantages. Firstly, that every proposal from the Assembly

Department passes through the scrutiny of Government which is only one of the parties in the House, and thus this party can always colour those proposals before they come to the Assembly. Secondly, if one political party has opportunity to discuss the proposals pertaining to the House before they come to the legislature, why should not, in all fairness, other political parties have similar opportunities? Thirdly, this system is derogatory to the high position of the Speaker, inasmuch as the Speaker has to approach for every minor thing the Government. Thus in all matters e.g. grants, staff and their conditions of service, even exemption of his staff from educational, residence and age qualifications, the Speaker has usually to obtain sanction of the Government. And the worst aspect of it is that invariably all recommendation and proposal emanating from the Speaker are scrutinised and criticised not only by the officers of the Secretariat but also by their clerks. This position is rather anomalous to the high dignity which the Speaker holds both in the constitution and in the House.

This feeling was actually voiced by the Speaker of the Bengal and Orissa Legislative Assemblies. On February 18, 1942, the Speaker of the Bengal Legislative Assembly said in the House

"I wish to say that the Speaker and the Assembly are considered as subordinate to the Secretariat administration and as such the Speaker has not ordinarily the right to approach directly the Ministers. He has to approach the Secretary of the Department. I do not know how matters stand. It is possible that most of these matters may have nothing to do with the Ministers. I have to take orders from Government and for the purpose of matters concerning the Assembly which is subordinate administration, we have to accept



decisions of the Secretariat How Secretariat works I do not know."

On another occasion the Bengal Speaker, on March 13, 1943 added —

"The second function which the Speaker has to discharge is in connection with the administrative work of the Assembly Department and here under the constitution as it at present stands the financial responsibility of every expenditure in connection with the Assembly is with the Government and it is the Government which has to submit budget proposals to this House and has to explain its reasons and justifications. It is in these circumstances that the Speaker has to administer his Department under rules framed by the Government. Here he is often powerless at points where he may come into conflict with the views of Government. I propose to write to you later in full as to the lines on which the Assembly Department should work and to place my experience before you so that you might at a time when I shall not be the Speaker, consider the whole question on its merits. There are, however, two questions to which I would like to draw your special attention, namely —

(1) that the status of the Department and of its officers should be exactly the same as those in the Secretariat and

(2) that the pay and prospects of the Assembly Department staff should in no way be inferior to those working in other Departments directly under the control of Government. I do hope that you will kindly consider this matter as early as possible.

"May I also state one other matter. For the last 5 years I have tried to build up the working of the Assembly office as belonging to this House and even though in administrative matters we have to accept

Government rules I have all along worked towards the ideal that it is to this Assembly that it should ultimately be responsible and that it must function keeping this House in front to build up parliamentary traditions. Let us remember that a very large part of our success depends on the genuine devotion and work by the office staff and I do honestly, frankly and unequivocally admit, how much I owe to the staff with whom I have worked for the last 5 years."

### 5 Statutory Provisions for Departmental Autonomy

It is, therefore, considered necessary that in the interest of satisfactory working of the Legislative machinery all power of direction, superintendence and control over the Assembly staff which is exercised by Government should be exercised by the Speaker who is, of course, ultimately responsible to the Assembly, or, in other words, directly by the House through its Speaker. These powers are derived from various sections of the Government of India Act 1935 such as. Power of making Rules regarding "conditions of service". Broadly speaking these includes Departmental Rules, creation of posts, pay, scales, pension, leave, travelling allowance, punishment, qualifications etc. The procedure hitherto adopted in framing "Conditions of services" Rules has been primarily to make service Rules or Department Rules for a services or Department dealing with their particular matter but matters common to all services or departments, such as, pension, age, qualifications etc. are dealt with in separate sets of general rules. All these Rules are, however, issued by Government under Section 241 (2) which provides that, "Except as expressly provided by this Act, the conditions of service of persons serving His

Majesty in a civil capacity in India shall, 'subject to the provisions of this section' be such as may be prescribed—

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some persons or person authorized by the Governor-General to make rules for the purpose,

(b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose "

It is, however, clear from the above section that the Governor i.e. Government can authorise some one to make rules for any service. It is thought that the best course is for the government to authorise the Speaker to make the rules regarding Assembly Department under section 241 (20). This will place the Assembly Department under Speaker's exclusive control

There is yet another way in which the Speaker can have full control over the Department. Under Section 241 (4) of the Government of India Act, 1935 the Provincial Legislature can pass an act governing conditions of service of the Assembly Department thereby authorising the Speaker to exercise independent control over his staff

As regards financial matters pertaining to the Department and the House it is considered that a committee composed of the Speaker, Leader of the House, Leader of the Opposition and a few other members should make budget estimates which the Government should by convention include in the General Budget, without any changes. There is perhaps already a convention more or less similar to this in South Africa

## CHAPTER XI FORMS AND RULES OF DEBATE

*Order is Heaven's first Law"*

### 1. Motions.

In this chapter we shall discuss the way in which the debate in the house is initiated, conducted and how the decision of the house is taken. The intention is to deal with the general rules of debate irrespective of the nature of the business discussed. The proper form to start the debate on any subject is a definite motion to that effect. There are certain motions that require notice and these can be moved by the member in whose name a notice stands. But in the case of a member of the Government, the practice is not so strictly followed. A motion is moved in the same form in which the notice is given.

A motion having been moved, the Chair proposes the question repeating the terms of the motion, and the discussion begins. During the course of the discussion subordinate motions may also be made affecting the main question e. g. motions for amendments. These are called subsidiary motions as distinguished from substantive motions on which they depend. Subsidiary motions are of 3 kinds —

Firstly, ancillary motions which are recognised as the proper way of proceeding with the various kinds of business e. g. various stages of a bill, its first reading, 2nd reading, 3rd reading and other motions connected therewith. Secondly, there may be dilatory motions e. g. the motions for adjournment for purposes of debate which supersede the original issue before the house. Thirdly, there are amendments or

amendments to amendment, and so on, which depend upon another main question and merely seek to modify it

### **Rulings.**

A motion must not raise a question substantially identical with a question on which the house has given a decision in the same session (Central L A 27-9-22) Motion that has been moved and withdrawn cannot be repeated during the same session. A motion moved is the property of the house and cannot be withdrawn except by its permissions (Central L A 27-2-1925) Questions and resolutions are admitted first before they are put on the agenda, but amendments and motions and other things appear automatically on the agenda in a sort of mechanical way, and the mere fact that a certain item appears on the agenda need not be taken that it has exactly the approval of the Chair and that the Chair is committed to it (U P L C II 190 )

## **2 Amendments**

The amendments are the most complicated of all these three. From the point of view of their forms, amendments or amendments to amendments are divided into 3 classes —

(1) Those which propose to delete some part from the main proposition. In such a case, the form of the question put by the Chair is "That the words proposed to be left out stand part (of the bill or resolution)" The effect of negating this amendment is to prevent any other amendment being moved to the words ordered to stand part. If the amendment is carried, the main question may be put with those words omitted.

(2) Those which move for substitution i.e. omitting certain words and replacing them by certain other words. In such cases two questions are separately

put by the Chair. In the first place the chair puts that "The words proposed to be left out stand part." If it is agreed to, the main question may be put. If, however, it is negatived the second question is put "That the words proposed to be substituted be inserted there." If it is agreed to, the main question as amended may be put. If it is negatived, a new substitution may be proposed and the proceedings begin as when an addition is made.

(3) Those amendments which propose merely to add or insert words. These present little difficulty and the proper form of the question put is "That those words be added or inserted there." If this question is agreed to, the main question, as amended, is put. Otherwise the motion is put in its original form.

But amendments are out of order—(1) if they are irrelevant, defective, meaningless or ungrammatical, (2) if they are inconsistent, repetitive or when they come too late when the provisions relating to them have already been ordered to stand part, (3) if they propose to leave out words in order to re-insert them as part of substituted words, (4) if they propose amendments to motions for closure, (5) if they have merely the effect of a negative vote.

### Rulings

The mover of an amendment must formally move the amendment before proceeding with his speech, and must give its copy to the Chair, if it is not already on the order paper. An amendment on the order paper may be altered, before it is moved, with the permission of the Chair (Central L. A. 27 1 26). But an amendment cannot be moved by a member on behalf of another. (Central L. A. 27, 3. 1928) It was also ruled in the Legislative Assembly (Central) on 17th September, 1929, that a member speaking on an

original motion without moving, an amendment cannot move an amendment subsequently. In the same house it was also ruled on 15th September, 1925, that the members tabling amendments were not bound to be called out by the Chair unless they rise in their seat and catch the eye of the Chair in proper time in order to get a chance to move the amendment standing in their names.

The President of the Legislative Assembly ruled on 9th September, 1925, that it was at the discretion of the Chair to select amendments on the order paper and to decide the order in which the Chair should call the members whose amendments were in order. The amendments must not be inconsistent with any previous decision nor are they to anticipate later resolutions (Central L. A. 21-3-1922). The mover of an amendment has no right of making another speech in reply to the speeches delivered before, (Central L. A. 22-3-29). An amendment once moved in the house can be withdrawn only with the consent of the Chair (Central L. A. 18-1-1922). Mover of an amendment to a resolution has only one right of reply. Where several amendments have been moved to a resolution, the mover of an amendment while speaking on his own amendment may also speak on other amendments (Bihar L. A. 6-9-1937). There is no right of proxy for moving an amendment (U. P. L. C. V, 582, VI, 717). The object of the rule about time-limit for tabling amendments is that nobody should be taken by surprise (U. P. L. C. VI, 746—747).

### 3. Closure.

If the discussion is prolonged on a motion any member may move for its closure. If the motion for closure is accepted by the Chair and house, the issue under discussion is forthwith put after the

speech of the original mover and the Member of the Government in charge, if necessary. But the motion for closure can be put to the vote of the house only when it is accepted by the Chair, for even when a majority of the house may think in one way, it is a well established parliamentary practice that the minority have freedom of speech and the Chair has a right to protect their rights

### Rulings.

It was held in the Central Legislature Assembly on September 27, 1921 that once the motion of closure has been accepted by the Chair, the final decision rested with the House. In the same House it was held on March 18, 1927 that no debate was allowed on a motion for closure and when the motion was accepted by the House, no amendment of the original motion was in order, closure need not be applied when the debate come to a close and only the final replies remain to be given (Bihar L. A. 3-5-1937).

### 4 Division.

At the conclusion of debate on a motion before the house, the Chair rises to put the question repeating the original motion with the preface "The question is that " He then proceeds to take the opinion of the house by saying, "As many as are of that opinion say 'Ayes' and as many as are of the contrary opinion say 'Noes'" and announces his provisional decision whether in his judgment the 'Ayes' or the 'Noes' have it. If his judgment is challenged, the division bells are ordered to ring usually for two minutes so that all the members who are in different parts of the chamber might gather. But members agreeing with the provisional decision of the Chair cannot claim division (U. P. L. C. 7-12-1921).



After two minutes the bells stop and doors are closed after which members are not allowed to come inside the chamber. The question is again put. If the decision of the Chair is still challenged, members are asked to retire into the 'Ayes' and 'Noes' lobbies bordered on all sides of the house. Sometimes when the Chair considers a division unnecessarily claimed, he can ask the members in favour to stand up in their seats instead of dividing in the lobbies, but this must be done only after the division bells. The decision of the house is announced by the Chair and in case of equality of votes the Chair exercises his casting vote. Divisions of an obstructive or frivolous nature may not be allowed. A member voting under a misapprehension is entitled to have his vote corrected, if he brings it to the notice of the Chair before the division is closed. But a member not going to the lobby in proper time is not allowed to vote.

### Rulings.

Undue influence over members to vote in a particular lobby is a "serious offence". The question is one of important principle. The working of this Assembly is based upon the right of free speech and any invasion of that right calls for the severest rebuke from the Chair and the Chair may always be relied to uphold upon it" (Central L. A. 26-1-1922). Similarly, it was ruled in the Central Legislative Assembly on 13th March 1928 that the House was not a place to make propaganda. In course of a division it is not permissible for an hon'ble member to return to the House from the Division Lobby unless the second bell indicating that the division is over, is rung (Bihar L. A. 16-10-1939). The Chair is to determine the manner in which a division should be taken, the method of taking votes by asking members to rise in

their seats is a recognised method (Bihar L A. 1938 Vol, III) Votes of members entering House when a division is on should not be recorded (Bihar L A 20-4-1938) After the Secretary has set the division bell aringing thus indicating that the division is over and calling back the members from the division lobbies to the House, at that time no member is entitled to go to the lobby to get his vote recorded. If, however, a member so recorded his vote it is cancelled (Bihar L A 3-10-1939) A member can remain neutral after his own Motion has been pressed by him for vote and to division and when he is himself present in the House (Assam L A 13-3-1945) Bargaining for votes across the floor of the House cannot be allowed (Central L A Vol VIII (1936) 2432) As soon as division bell is rung all the members are to come and sit in the Chamber, and if a member does not enter lobby from the Chamber, he is not entitled to vote? (Assam L C 4-3-1935) Chair could refuse a poll, unnecessarily demanded (Madras L A 1938 Vol VII p 227) Mistakes in division list can be corrected even after announcement of result of division (U P. L. C 7-12-1933) Pulling any member by his coat during a division with a view to induce him not to vote is held to be objectionable when the member had not fully risen (Madras L A 1938 Vol 217.) Canvassing is not permissible within the House at the time of voting attention of Chair to be drawn immediately when canvassing takes place in the House, such point of order being permissible at all stages (Bihar L C 11-10-1939).

### 5. Rules for Addressing the House.

A member wishing to speak rises in his place. The case of those who are infirm and sick is, of

course; different With the permission and general consent of the house they may be allowed to keep sitting while addressing the house. If more than one member rise in their seats the Chair chooses which member is to speak first (Central L. A. 20-1-1922). A member cannot make a speech unless he has been called to do so by the Chair (Central L. A. 25-9-29). It would be interesting to note here that in the House of Lords, unlike the House of Commons, it is not the Chair but the House itself who call upon the members to speak. A member speaks either from his seat or from the rostrum so that every member may distinctly hear him.

In the House of Lords a member addresses his speech to the rest of the house. In the House of Commons the speeches are addressed to the Speaker according to the well-established practice that the Speaker used to be the mouth of the house. In India, the practice of the House of Commons is followed and all speeches and suggestions are addressed to the Chair. It has the distinct advantage of preventing the debate degenerating into personal attacks and recrimination between members or desultory conversation. Even addressing the house as "President and Members of the house" is not in order as it is only the Chair which can be addressed (Central L. A. 24-1-1921).

A member may read extracts from documents but his own speech must be unwritten. The prohibition of reading speeches discourages rhetoric and puts a premium on the debator's talent of finding his points in the earlier speeches. In exceptional cases, however, the Chair may not object to the reading of a speech from a member if he feels shy in speaking extempore. This concession was much utilised by

illiterate members of the fourth Legislative Council, who were sent in by the electorate to mock the Legislatures

## 6 Rules of Debates.

A member while speaking must be relevant to the issue before the house. The Chair enforces relevancy by calling the member to order and if he persists in irrelevancy he can ask him to discontinue his speech.

Members may not speak more than once on the same question even if the debate on that question is adjourned and resumed days or weeks later. But at the conclusion of debate a right of reply is allowed to the mover and the Member of the Government in charge. A member may, however, rise to a point of order or make personal explanation or address queries with the permission of the Chair, but in this he must be as brief and appropriate as possible. Interruptions should be avoided as far as possible and they are tolerated only when they are absolutely necessary and when the member speaking gives way. A member interrupting should rise in his seat and speak distinctly. Interruptions must not be argumentative and must not exceed certain limits making the speaker unable to continue his speech. It is not parliamentary behaviour to be constantly interrupting.

But a member while speaking should not refer to any matter of fact on which a judicial decision is pending. Nor should a member make a personal charge against another member. The use of offensive expressions regarding the conduct of the Legislatures or any expression reflecting upon the conduct of His Majesty, the King Emperor or any court of law in exercise of its judicial function, are prohibited in the legislature. Similarly, to utter treasonable, seditious, defamatory words or the use of the right of speech for

the purpose of wilfully and persistently obstructing the business of the house are not allowed in the legislatures

## Rulings

It is not in order to cast reflections on the conduct of the chair or the Governor-General or Governor. References to the proceedings of the other House should be avoided as far as possible (Central L A 28-3-29). Similarly, the name of the Crown or criticism of His Majesty's Government should be avoided (Central L A 26-3-22). Members making speech of a personal character or making allegation against another member should be present in the chamber during debate to hear the reply and should not refer to private conversation or meetings.

Characterising a speech as "indecent", "untruth", "intentionally misleading", "rotten lie" have been declared out of order in the Central Legislative Assembly. Similarly, characterising the house or member as "imbecile" or "as one who were prepared to sell their souls" have been declared out of order<sup>1</sup>.

A member should not repeat arguments already discussed and must not refer to rumours heard outside the house. New matter cannot be introduced by way of reply (Central L A 31 1 27) for the simple reason that other members having already spoken have no more opportunity to speak.

It is not desirable that subjects once discussed should be reopened (Madras L A 1938 Vol VI. 535). Members are not permitted to cast reflections upon the manner in which proceedings have been conducted or legislation has been carried on, as such reflections are unparliamentary. (Madras L A. 1938 Vol 80-81). Members are not permitted to reflect on

1. Central L A 19-3 1923, 22-9 1924 19 3 1926, 14 3 1924

Bills already passed. (Madras L A 1938 Vol VI. 60) Repetition of arguments that were previously advanced is unparliamentary (Madras L. A 1938 Vol VI 133) The conduct of a Minister in washing his own clothes is not part of the doings of the Ministry (Madras L.A 1938 Vol. VI) 314 It is unparliamentary to question the sincerity of any Member or Minister (Madras L A 1938 Vol VI 261-262) When an hon. Member is in possession of the House, no other hon. Member can speak unless the former yields. (Madras L. A. 1938 Vol. VI 528.)

Comments on the conduct of any member either inside or outside the House are not proper (Madras L A. 1938 Vol VI 739) Personal references ought to be avoided as far as possible (Madras L A 1938 Vol VI 641) Mover of a motion in making his reply is entitled only to reply to the criticisms made and not introduce new matter nor can he read new documents (Madras L A 1938 Vol VII) 207 No improper motive to another member should be attributed nor should there be any discussion of the conduct of a member except on a motion to discuss his conduct as a member (Bihar L A 12-4-1938) References in a debate to the activities of the Hon'ble the Speaker before his assumption of office are not in order (Bihar L A 27-8-1937) Deputy Speaker should be referred to in debates with reference to the constituency he represents and not with reference to his office (Bihar L A 3-9-1937) Reading of newspapers in the House not permissible. (Bihar L A. 6-10-1939) Absence of the mover of a motion while it is being discussed in the House is undesirable (Bihar L A. 20-9-1939) Personal references containing reflection on and imputation of motives to members should be avoided in debates (Bihar L A. 23-1-1939) Imputation of motives by one

member to another member is not in order (Bihar L. A. 27-2-1939) A case of which a Court of Law has taken cognisance cannot be referred to in the debate on any resolution (Bihar L A 19-4-1938) One of the fundamentals of debate is that the *bona fides* of members are always to be presumed and everything is to be taken impersonally That is the only way in which a high level of debate can be maintained (Bihar L A 1-9-1939) In the House written speeches are not permissible Member may, however, refresh memory with reference to notes (Bihar L A 9-2-1938) Introduction of new points in reply by the mover of a motion or by Government is not permissible (Bihar L A 26-7-1938).

## 7 Rules of conduct for members not speaking

While a member speaks, others must keep silence and restrict their movements as far as possible in order to create an atmosphere for thoughtful deliberation In case they leave the house they should leave it with decorum. The established practice is to bow to the Chair on resuming or leaving the seat in the house It is disorderly to cross between the Chair and a member speaking Reading of books and newspapers is also prohibited, although it might be overlooked on the assumption that it is preparation for a debate, nor should the official members do their office work in the chamber<sup>1</sup> It is also irregular for members to loiter on the floor of the house after a division has been ordered or to go canvassing into a lobby.

## 8. Maintenance of order.

The Chair decides on all points of order arising during the debate and his decision is final, but the

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1. Central L A 22-9-1928

members have a right to submit a point of order for the consideration of the Chair.

The Chair preserves order and has all powers necessary for the purpose of enforcing decisions. He may direct any member whose conduct is, in his opinion grossly disorderly to withdraw immediately from the House, and any member so ordered to withdraw should forthwith absent himself during the remaining of the day's meeting. If any member is ordered to withdraw a second time in the same session, the Chair may direct the member to absent himself from the meetings of the chamber for any period not longer than the remainder of the session, and the member so directed should absent himself accordingly. The Chair may, in case of grave disorder arising in the house suspend any sitting for a time to be named by him.

### Rulings.

The Chair has got all the rights of the house to interpret and decide on the rules (Madras L. A. 1938 Vol. VI 425). Visitors watching the proceedings of the House cannot participate in the proceedings in any manner whatsoever, not even by clapping or ejaculation (Bihar L. A. 30-5-1938). No Honourable Member should cross the line between the speaker and the Chair (Central L. A. Vol. III (1939) 2605). An Honourable Member has no right to challenge a ruling, right or wrong (Central L. A. Vol. IV (1939) 3561). When the President addresses the House, no Honourable Member should remain standing (Central L. A. Vol. II (1938) 1513). No ruling of the Chair can be discussed? (Central L. A. Vol. I (1938) 168). An Honourable Member cannot refer to the speech made by the Deputy President so long as he is the Chair (Central L. A. Vol. VIII). No remark



should be made upon the Chair, however much an Honourable Member may disagree with its rulings (Central L A Vol III (1939) 2048)

## CHAPTER XII

### THE LEGISLATURE AT WORK

*"That which is morally wrong, can never be politically right"*

#### 1 Preliminary Work.

The primary stage in a House of legislature in India is not prayers so conspicuous in the House of Commons. The proceedings in a House of Indian Legislature start with the oath or affirmation of allegiance to the Crown. Every elected or nominated member before taking his seat in the House makes at a meeting of the House the following oath —

• "I, A B. having been elected (or nominated or appointed) a member of this council (or Assembly) do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty, the King, Emperor of India, His heirs and successors, and that I will faithfully discharge the duties about which I am to enter"

In the case of rulers of Indian States who may be members of the Federal Legislature this form is slightly different. They swear (or affirm) in their "capacity as members" of the House. On the other hand, a subject of the ruler of an Indian State swears (or affirms) in his "capacity as member" of the House, subject to one condition i. e. "Saying the faith and allegiance which (he) owes" to his ruler and his heirs and successors. In the case of the members for the

Provincial Assembly from Berar, it is understood that, by an agreement between His Exalted Highness the Nizam and His Majesty's Government, the Berar Members will have to take two oaths of allegiance, one to the Nizam and the other as in the case of British Indian members

The Christian members usually kiss the Bible. The non-observance of the oath or affirmation disqualifies a member from the membership of the House.

The House, then, proceeds to elect a President or Speaker of the House who maintains order and decorum and conducts the business of the House in a peaceful manner. We have already discussed the functions of the office of the President or Speaker. The Government of India Act 1919 provided for the appointment of the President of the House by the Governor-General or Governor as was necessary for the first 4 years but after that period the President was to be elected by the House from amongst its members. Section 65 of the Government of India Act 1935 provides

(1) Every Provincial Legislative Assembly shall as soon as may be choose two members of the Assembly to be respectively speaker and Deputy Speaker thereof and so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker as the case may be

(2) A member holding office as Speaker or Deputy Speaker of an Assembly shall vacate his office if he ceases to be a member of the Assembly, may at any time resign his office by writing under his hand addressed to the Governor and may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Assembly but no resolution for the purpose of this subsection shall

be moved unless at least fourteen days, notice has been given of the intention to move the resolution. Provided that whenever the Assembly is dissolved the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

(3) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may in his discretion appoint for the purpose, and during any absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly or, if no such person is present, such other person as may be determined by the Assembly shall act as Speaker.

(4) There shall be paid to the Speaker and the Deputy Speaker of the Assembly such salaries as may be respectively fixed by Act of the Provincial Legislature; and, until provision in that behalf is so made, such salaries as the Governor may determine.

(5) In the case of the province having a Legislative Council the foregoing provisions of this Section other than the province to sub section (2) thereof shall apply in relation to the Legislative Council as they apply in relation to the Legislative Assembly with the substitution of the titles "President" and "Deputy-President" for the titles Speaker and "Deputy-Speaker" respectively, and with the substitution of references to the Council for reference to the Assembly.

Another preliminary act at the opening of a session is usually the address by the Governor-General or Governor, as the case may be, on the general position of the Government and its future policy.

## 2. Business of the House.

The preliminaries having been accomplished the House begins to work. There are four main divisions of this work —

1. critical the imposition of a check upon the Government by interpellations and criticism

2. deliberative the discussion of matters of public importance

3 legislative the making of laws and amending of existing statutes

4. the Budget the estimates of income and expenditure

### Rulings

It is not necessary to obtain the previous sanction of Governor if on a particular day the sitting of the Assembly has to be extended beyond the usual hours of sitting if the business before the Assembly so requires (Bihar L A 24-8-1937) Papers required in connection with business before the Assembly should be circulated to the members irrespective of information regarding such business having appeared in newspaper (Bihar L A 23-4-1938) Asking for information in connection with an item appearing in the List of Business is permissible (Bihar L A. 4-9-1937). Government are not bound to allow any part of Government time for any item of non-official business (Madras L. A 1938 Vol VII. 231) Order of business settled by ballot is not to be changed without leave of the House (Behar L. C. 25-9-1939)

## 3. Language of the House.

English is the official language recognised by the Government of India Act 1935, although any member who is not fluent in English may address the house in his own language. But the Chair may call upon

a member to speak in any language in which he is known to be conversant. In the Assembly members are required to give notice of all motions in English, but if any member is unacquainted with English, the Secretary, if requested, may get translated a motion or amendment in such language as the Chair may direct. Similar practice is followed in the case of the Provincial Legislatures.

In the Central Assembly on the 27th September 1921, at the conclusion of the speech delivered in Urdu by Maulvi Miyan Asjad-ul-lah, Rao Bahadur C. S. Subrahmanayam enquired if there was any rule under which the speech could be translated into English. The President said: "The appointment of an official interpreter has not yet been considered. The speech will be printed both in the original and in a translation in the official report and that for the moment, I think, must satisfy the Hon'ble Member from Madras."

With the wide extension of franchise and the enlarged legislatures, the question of language spoken in the legislature in India is bound to attract considerably attention, particularly amongst the members not well conversant with English. It may, therefore, be not out of place to relate the procedure followed in this respect in other countries of British Empire having more than one language.

In the Canadian Dominion "either English or French language may be used by any person in the debates of the House of the Parliament of Canada and of the Houses of the legislature of Quebec and both those languages shall be used in the respective records and journals of those Houses and either of those languages may be used by any person or in any pleading or process or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec. The Acts of the Parliament

of Canada and of the legislature of Quebec shall be printed and published in both those languages" (Sec 113 of the British North America Act 1867)

The standing orders of the House of Commons in Canada provide as follows —

"47 All motions shall be in writing and seconded before being debated or put from the Chair. When a motion is seconded, it shall be read in English and in French by Mr Speaker, if he be familiar with both the languages; if not Mr Speaker shall read the motion in one language and direct the clerk at the Table to read it in the other, before debate

"72 All bills shall be printed before the second reading in English and French languages."

Thus in both the Houses, bills, orders and journals are printed in both languages but on separate sheets, although 99% of the proceedings in the Senate are in English. Both French and English versions are given Royal Assent. In 1934 an Act was passed by the Dominion Parliament providing for the setting up of a Bureau of Translation, under a minister of the Crown, to deal not only with the translation work of the both the Houses, but of all departments of public service.

In New Zealand English is the only official language but Maori Members are permitted to speak in Maori and are allowed an interpreter. But bills and proceedings are printed only in English.

In the Union parliament under 137 of the South Africa Act, "Both the English and the Dutch languages shall be the official languages of the union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights and privileges. All records, journals and proceedings of Parliament shall

be kept in both languages, and all bills, acts and notices of general public importance issued by the Government of the Union shall be in both the languages (Dutch includes Afrikaans as provided in Section I of Act no 8 of 1925) Even daily prayers are read on alternate days in English and Dutch and all Parliamentary records and documents are also bilingual Similar practice is generally followed in the provinces too.

In Transvaal the practice is slightly different but a member may speak in either of the official languages. Notice of motions and questions and other documents connected solely with the work of the Council are translated by the council staff The estimates are made up in both languages line by line

In South-West Africa the official languages used in the Legislative Assembly are English and Afrikaans, and under Section 22 (4) of the Constitution any member may address in German, but no interpreter is employed

Article 4 of the Constitution of the Irish Free State says that "The national language of the Irish Free State (Saorstát Éireann) is the Irish language but the English language shall be equally recognised as an official language"

In Malta also debates are conducted either in English, Italian or Maltese

### Rulings

'There is no obligation upon members who know some English to speak in that language, when they are not so well acquainted with it as to be able to express themselves very clearly and effectively, if they are able to speak more effectively efficiently lucidly in their own mother tongue Madras L. A. Vol III (1) Member sufficiently familiar with the

English language should address the House in that language (2) Member must ordinarily address the House in the language in which he is first allowed to speak (3) Member speaking in vernacular can adopt only the vernacular languages recognised in the Rules of Business (Bihar L A 14-9-1937) If the Hon Member thinks and feels that he can speak in his mother tongue much better than in English or any other language, he is at perfect liberty to do so (Madras L A 1938 Vol VII 38). Every member is at liberty to speak in any language he chooses (Madras L A 1938 Vol VII 37) Chair may in its discretion allow members to address the House in Vernacular (Bihar L A 3-9-1937)

#### 4. Rulings (General)

Chair maintains *status quo* in case of equality of votes On November 2, 1922 in the U P Legislative Council, Babu Chail Behari Kapur moved that the demand for Rupees 10 under the head Civil Works, a new demand be omitted. The House having equally divided on this issue, the President observed, "As it happens the result of the voting is Ayes 21, Noes 21. It lies on me consequently to give a vote one side or the other. This is entirely new item and the Council has not expressed its opinion in favour of it. Hence I vote with the Ayes." The demand was therefore refused. When a bill comes before the house as reported by the Select Committee and it fails to come to a decision by a majority as regards a particular amendment the chair votes for the *status quo* i.e. for the retention of the words as reported by the Select Committee (U P L. C Vol. XXX p 640-43.)

It is out of order for a member to characterise observations of speaker as "oration of the chair." The



speaker ordered the remarks to be expunged from the proceedings (U P L A 13 10 1939) Casting vote is *status quo* in case of Amendment to a Bill: (Bihar L C. 18-8-1938) Principle on which casting vote to be given *Status quo* to be maintained. (Bihar L C 14-12-1937) The Chair is prepared to pay the utmost consideration to any argument for the revision of a ruling if the matter is raised at the proper time and in a situation similar to that which gave rise to the old ruling (Madras L A 1938 Vol. VI 423.) No privilege was violated when the Congress Working Committee advised Mr Speaker not to proceed to England in pursuance of a resolution previously passed by the House The question of the acceptance of such advice was purely a matter for the personal judgment and discretion of Mr Speaker. (Madras L A 1938 Vol VII 31-32) Unless any question or resolution or motion is admitted it should not be published in the Press (Assam L C 2-3-1935) Expunction from, Assembly Proceedings can be made only by means of a motion brought by a member before, and agreed to by the House Whether the Speaker can give his consent to the moving of such a motion can be decided only when the motion is actually brought forward (Bihar L A 8-3-1938) Held that the provision of a loud-speaker outside the Assembly buildings to enable visitors to listen to the debates is in order and that there is nothing unparliamentary in providing such facilities (Madras L A. 1938 Vol. VI 422-423) . It is not proper to mention in the House the opinion of foreign visitors as to whether broadcasting of proceedings of the House by a loudspeaker outside the House is parliamentary or not. (Madras L A 1938, Vol. VI. 422.) It is quite within the right of the Ministry to decide whether a particular document is confidential or not and

to withhold placing such document for the information of the House if it is regarded as confidential. (Assam L. A. 21-11-1940.) Existence of a quorum is not to be counted again if it is done a short time before (Assam L. C. 14-9-1933). Orders under section 144 are judicial orders and cannot be discussed by the Assembly (Punjab L. A. Vol. 23 P. 79). Reflections by newspapers on members of the House or on their conduct is improper (U. P. L. A. 30-9-1937). Constitution of Cabinet by the Governor—Reference to the manner in which the Governor constituted the Cabinet, not permitted. (Madras L. A. 1938 Vol. VI 331-332). Members may take their oath in any recognised language of the province (Bihar L. A. 22-7-37). Every member of the House has got equal rights, equal privileges, equal dignity and equal honour (Madras L. A. 1938 Vol. VI 293.) A minister who was not a member of the House has the right to move any bills and to make any motions (U. P. L. A. 30-9-1937).

So long as there is a quorum, it is not within the power of the President to adjourn the House on a ground that there were only two Indian elected Members present in the whole House. No distinction can be made in a matter like this between one Member and another Indian or European, and whether he is elected or nominated, official or non-official. Central L. A. Vol. I (1937) 636. Ordering the agenda to be put on the notice board in the morning for the benefit of honourable members (U. P. L. C. Vol. 11 110—111). Language—The word "Traitor" should not be used by an Honourable Member (Central L. A. Vol. IX (1936) 2804, unparliamentary Language.—The word "liar" cannot be used in the Chamber. Central L. A. Vol. VII (1936) 2698. It is not right that an Honourable Member should put questions across the floor to

the speaker who is addressing the chair. He must get up and put the question through the Chair. Central L. A. Vol. III (1939) 2357

It is wholly out of order for Members on Official Benches to read or do anything with files not connected with the matter which is being discussed on the floor of the House. (Central L. A. Vol. V (1938) 1967-68) An Honourable Member cannot address the chair except from his allotted seat. Central L. A. Vol. I (1939) 835. It is highly undesirable for any Honourable Member to use any abusive language about another Honourable Member within the House. (Central L. A. Vol. III (1939) 2809) An Honourable Member should give his own arguments. The Chair will allow an Honourable Member to read from a document if they are not long passages. Central L. A. Vol. VI (1937) 2273. Calling an Honourable Member to be briefless while he is a practising barrister is unparliamentary. (Central L. A. Vol. VIII (1936) 2061)

A Honourable Member cannot raise a question on a subject which is not before the House. Central L. A. Vol. V (1940) 1027. The use of such language as "It was a great folly committed by this House in rejecting the Trade Agreement" is not in order as it constitutes a reflection upon a decision of this House. Central L. A. Vol. I (1935) 530. No Honourable Member can cast any reflection on the verdict of the House. Central L. A. Vol. III (1938) 2492. No Member can speak after question has been put. Central L. A. Vol. II (1938) 1812. Action taken by the Governor General in his discretion under Section 126 (5) of the Government of India Act, cannot be discussed or criticised on the floor of the House. Central L. A. Vol. I (1938) 722. To insinuate that an Honourable Member is dishonest and wanting in in

tegrity is not in order. Central L A Vol, VIII (1936) 2694. No reflection to be cast on the conduct of the other House (U P L C III, 355)

An Honourable Member cannot criticise the proceedings of the House Central L A Vol IV (1939) 3405 An Honourable Member cannot use such language, as "Monkey House", regarding this House Central L A Vol III (1935) 2220 No reflections should be cast on any gentleman not present in the House. Central L A Vol I (1938) 149 An Honourable Member should not discuss personalities individually Central L A Vol V (1937) 1930 An Honourable Member cannot have a discussion of what took place in a private conversation Central L A Vol I (1937) 978. "Devilish Government" is an unparliamentary expression Central L A Vol I (1935) 787 An Honourable Member is entitled to quote from any authority he likes, but he should give translation in a language understood by the House Central L A Vol VIII (1936) 2054 When it is clear that an amendment requires the previous sanction of the Governor General, it is the duty of the Chair to see that it has been obtained If any difficulty arises, then it is not for the Chair, but for the Governor General to decide Central L A Vol VII (1938) 3581

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## CHAPTER XIII

### INTERPELLATIONS

*"There is no tyranny so despotic as that of public opinion among a free people,"—Pratt.*

#### 1. Questions and answers

The first hour of every meeting of the House is available for interpellations i. e. for asking questions and answering them. The purpose of a question is to gather information or to bring certain facts to the notice of general public. It is a weapon in the hands of the legislature, for checking the day to day actions of the executive. The right to ask questions was first conferred on the Indian Legislatures by the Act of 1892 and it was repeated in the Acts of 1909 and 1919 and is continued in the new Act. Members not sworn in have no right to ask a question, although their questions may be given notice of on the presumption that they will be sworn in later.

„ Generally speaking not less than 10 days' clear notice is required to be given for asking a question. But this period may be shortened with the consent of the member of the Government whose department is concerned.

No discussion is allowed on questions but supplementary questions may be asked. Every member when asking a question has to say whether the question asked is to be classed as starred or unstarred. By starred question is meant that supplementary questions can be asked but no supplementary questions can be asked on unstarred questions. Nor can supplementary questions be asked on that part of a

question which has been disallowed by the Chair<sup>1</sup>. A supplementary question must not go beyond the scope of the main question and must be asked with the permission of the Chair<sup>2</sup>. Supplementary questions have been allowed on a day other than that on which the original question has been replied in the House. The purpose of this is to give time to a member to go through the lengthy correspondence forming part of the reply to the original question<sup>3</sup>, if necessary.

The question when once admitted by the Chair should be answered promptly after the expiration of the time allowed for notice. Only the questions that are not disallowed are entered in the agenda and are replied by the member addressed to. In case the member in whose name they stand ~~are~~<sup>is</sup> absent or the question is not formally put, the answer to it may be given on the ground that it is of public interest, and may be printed in the proceedings. On the request of the questioner questions may also be withdrawn before they are actually put in the House but this can be done only with the permission of the Chair.

The Chair may disallow any question on the ground that it relates to the Provincial Government if the question is asked in the Federal Legislature or that it relates to Federal Government if it is asked in a provincial legislature. No question can be asked in respect of a matter concerning the discharge or the discretionary powers or the exercise of individual judgment of the Governor General or Governor unless the Governor General or Governor has agreed. Nor can a question be asked either in the Federal or Provincial Legislature in respect of any of the undernoted subjects:

1. Central L. A. 49 8 1946, p. 113  
 2. Central L. A. 50 5 1924, p. 286  
 3. Central L. A. 10-9-1935, p. 702

1. Any matter connected with the relations between His Majesty or the Governor-General with any foreign state or Province \*

2 Any matter connected with Indian states other than a matter with respect to which the Federal legislature has power to make laws for that state, unless the Governor-General or Governor is satisfied that it affects the Federal or Provincial interests or affects a British subject, and has given his assent to the asking of such a question .

3 Any matter, connected with the tribal areas or the administration of any excluded area (save with the consent of Governor-General or Governor in his discretion) \*

4 Any matter pertaining to the personal conduct of the Ruler of an Indian State, or of the member of a ruling family thereof, (save with the consent of the Governor or Governor-General in his discretion)

The President or Speaker decides whether a question is or is not admissible under rules and can disallow any question when in his opinion it abuses the right of questioning or when the question is of a nature which obstructs or prejudicially affects the procedure of the House. He can also disallow it if it infringes the rules as to the subject matter of questions. But when a question is once admitted, no member can question its validity. Members must rise in their seats to get answers to questions.

A question should not contain statement of facts unless they are necessary to make the question intelligible nor should they contain epithets or controversial, ironical or offensive expressions. If any statement is made in the question, the member so stating is responsible for the accuracy of that statement. They must not refer to the character or conduct of

any person except in his official or public capacity and they must not be of excessive length.

In the Bengal Legislative Assembly, there was adopted a practice that questions relating to particular Departments were taken on particular days fixed for those Departments. This was, however, not very convenient to members and ministers. It was therefore later given up.

In 1924 the President, United Provinces Legislative Council ruled that questions the answers of which are available in public documents need not be asked in the House and the information should be sought by members themselves. Similarly, questions asking for detailed statistical information may first be addressed to the department concerned and they may be brought before the House only when the department fails to give satisfaction. Again, a question should be self-contained and not based on reference to newspaper reports.

A question should not be suggestive for a definite action, as questions are intended only to elicit information and not to make recommendations. In the Bombay Legislative Council a member asked the Government whether they will inform that they would prepare a manual for the Satara district. The President declared that it was out of order as it was suggesting a particular line of action. The proper way of asking such a question was whether the Government had any intention to do so.

A question should not be put in the form of cross examination. The President, Bombay Legislative Council ruled that questions are asked only for the purpose of eliciting information.

A question should not be argumentative. In the Legislative Assembly a member enquired whether a hotel was purchased for the members of the Central



Legislature, if so whether certain officials were residing therein. The Government answered that the hotel was lent to officials as they paid more rent. The member, then, characterised the action of the Government as a breach of faith. The President rules that it was an argument rather than a question.

Questions should not contain objectionable matter. In the House of Commons offensive insinuations and expressions were done away with by the Speaker, but the questioner insisted that without these the question will be unintelligible and that he did not purpose to put it. It was ruled that such questions cannot be allowed to put to

A question can only be put in the form in which it is printed in the agenda. When a question was misprinted in the Legislative Assembly the President ruled that a question can be put only in the form in which it has appeared in the agenda.

Reference to answers given in the other House should be avoided as far as possible. On 23rd March, 1922, Mr Denys Bray in answer to a question of Mr Shaham in the Legislative Assembly referred to an answer given in the Council of State, the President remarked, "I hope that members of the government in framing their answers will bear in mind the fact that reference to the proceedings in another place should as far as possible be avoided."

In the United Provinces Legislative Council, on February 27, 1925 the Government refused to answer a question while it was duly admitted by the President and on a point of order from Pt Govind Ballabh Pant, the President ruled that the Government could refuse to give information on certain matters, even when the question was duly admitted by the President of the House and not disallowed by the Governor.

It is not necessary at all times that only the member

of the Government in charge of the department shall answer a question. On February 28, 1924 the President, United Provinces Legislative Council ruled that the question may be answered by the head of the department or secretary to the government if the member of Government so desires. Long annexures to answers to questions need not be printed, but may be supplied only to the members concerned. In the United Provinces Legislative Council on February 21, 1928 the President ruled that when a question is called the member concerned, if present, must rise if he wishes to have the answers recorded.

## 2. Other Rulings

When an Honourable Member puts his question, it is included in the list, and it is not the business of the Assembly Department to see that the reply to the question—is made ready (Vol IV (1935) 3791 Central L A). If any Honourable Member finds that an answer is not satisfactory, it is up to him to find out any remedy he can. The Chair has no authority in the matter. Central L A Vol II (1939) 1139. When a Resolution is already down for discussion on a subsequent date, no adjournment motion—anticipating that Resolution can be allowed. (Central L A Vol I (1937) 159. Whenever any Honourable Member wishes to give notice of a motion of adjournment, if it is possible for him, he ought to give it in sufficient time for the Chair to consider it. (Central Vol II (1938) 1975.) A Member of Government cannot be compelled to satisfy by his answer any particular member. A Member of Government is at liberty to give any answer he considers appropriate. (Central L A Vol IV (1940) 133.) If the answers to questions given in the Council of State have been already published and made available to Honourable

Members there is no reason why they should be repeated in the Legislative Assembly again. (Central L A Vol VI (1935) 1300) Questioner responsible for the correctness of the statements contained in his questions (Bihar L A 9-5-1938) Government may not answer a question (Bihar L A 28-7-1938) Question Containing insinuation not in order (Bihar L A 27-3-1939) Question Relating to a case sub-judice cannot be put (Bihar L A 15-3-1939) Admissibility of a question a concern of the Speaker Nobody to challenge his decision (Bihar L A 23-12-1937) On Federal subject Questions may be allowed if the Minister is officially interested in it (Bihar L A 4-5-1938) Cross examination in a question not permissible (Bihar L A 1939 Vol 4) Information promised by Government in reply to question to be laid on the table and included in the proceedings (Bihar L A 20-9-1937) Identical questions asked by different members should be printed once, stating the names of members who put the questions But if there be slight variation, they should be separately printed (Assam L C 5-3-1935.) If in a question, there is any reflection on any individual, the questioner must take the responsibility. (Assam) L C 28-9-1936) Speaker has got the power to extend the time for started questions beyond the period of one hour laid down under the rules (Madras L A 1938 Vol VI 1108) A supplementary question cannot be put to any Minister excepting the one to whom the original question was put—but supplementary questions should not be put to speaker except on points of order or Rules of business and when such questions are put that should not be in the manner in which questions are put to the Government but by oral requests for information Honourable Members who intend to put supplementary question must rise

immediately after the question is answered (Madras L A 1938 Vol VII 351,) Press not to publish questions before they are actually put in the House (U P L. A 1-10-1937)

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## CHAPTER XIV

### MOTIONS FOR ADJOURNMENT.

*"The truth is always the strongest argument".*  
—Sophocles.

#### 1. Scope of adjournment motions

Interpellations are only a device to collect facts and figures regarding certain actions of the Government but it affords no opportunity for passing judgment over these actions. A motion for adjournment is meant to meet that end. It furnishes a means by which any act or omission of any department of Government may be criticised and even censured. Such a motion for adjournment must raise a definite matter of urgent public importance and may be made with the permission of the Chair.

Leave to move the motion must be asked for after questions and before the list of business for the day is entered upon. The member asking for leave must, before the commencement of the sitting of the day, leave with the Secretary a written statement of the matter proposed to be discussed.

If the Chair is of opinion that the matter proposed to be discussed is in order, he reads the statement to the House and asks whether the member has the leave of the House to move adjournment. If objection is taken the Chair requests those members who are in

favour of leave being granted to rise in their places, and if a prescribed number of members, which varies from province to province rise in their places the Chair intimates that leave is granted and that the motion will be taken at a time to be named when the business of the day may terminate. If less than the fixed number of members rise, the Chair informs the member that he has not the leave of the House.

. Even when a motion for adjournment is allowed by the Chair, the Governor-General or Governor, as the case may be, may disallow it on the ground that it relates to a matter which is not primarily the concern of his Government or that it is against public interest and, if he does so, the motion for adjournment cannot be moved.

An interesting discussion took place in the Legislative Assembly on 3rd September 1936 on Mr Satyamurti's motion for adjournment relating to "the failure of the Government of India to enforce strict neutrality on the part of the Local Governments in respect of political parties and their propaganda for the ensuing provincial elections specially in the North West Frontier Province". The notice of the motion was duly given to the Secretary of the Assembly but before the motion for leave to move the adjournment could be made in the House the President announced that the motion has been disallowed under rule 22 (2) of the Indian Legislative rules. A point of order was then raised whether such disallowance was in order. Mr Satyamurti's contention was that under the said rule "the Governor-General may disallow any motion for adjournment" only when it reaches the stage of a motion and that it does not reach the stage of a motion until leave to move the motion is asked for by the mover and the chair states that the leave is granted. "Till that stage is reached

the Governor-General does not come into the picture at all (and) he cannot disallow leave to ask for an adjournment" After hearing the views of the other side the President of the Assembly next day stated the procedure in respect of such motions "The first stage is the giving of notice to the Secretary of a motion for adjournment which an Hon'ble member wishes to move, and then the President has to see whether the motion is in order according to Rules and Standing Orders of the House Then he ascertains from the members of the Assembly whether the Honourable Member who has given notice has leave of the Assembly to move the motion If any objection is taken, he has to find out whether not less than 25 members are for leave being granted, and then he puts down the motion for being heard at 4 o'clock the same day" Referring to the time when Governor-General could disallow a motion for adjournment the President ruled that "the proper time at which the Governor-General is expected to pass an order, if he so chooses, disallowing a motion notwithstanding that it has been consented to by the president is after the consent of the President has been given."

The right to move an adjournment for the purpose of discussing a definite matter of urgent public importance is subject to the following restrictions, namely —

- 1 Not more than one such motion will be made at the same sitting
- 2 Not more than one matter can be discussed on the same motion, and the motion must be restricted to a specific matter of recent occurrence
- 3 The motion must not revive discussion on a matter which has been discussed in the same session.
- 4 the motion must not anticipate a matter which has been previously appointed for consideration or

with reference to which a notice of motion has been previously given, and

5 the motion must not deal with matter on which a resolution could not be moved

If the motion does not comply with any of the foregoing rules, it is to be ruled out of order. An adjournment motion is a procedure of an extraordinary nature, in which the ordinary and normal business fixed for the day is suspended to give preference to that motion and accordingly an adjournment motion should not be lightly brought out in the House unless the member is fully convinced of its necessity.

Thus motions of adjournment affecting relations with Indian princes or reflecting on the conduct of judges or matters sub-judice have been declared out of order in the Legislative Assembly. Similarly a motion not concerning primarily a particular Government is out of order. Thus the motion on 6th April, 1921 in United Provinces Legislative Council drawing attention of United Provinces Government to the Oudh and Rohilkhand Railway strike was declared out of order, as it was not the concern of the provincial government, nor was the motion of Pt Madan Mohan Malaviya on 25th February 1924 in the Legislative Assembly regarding Akali Jatha was in order as it was not primarily the concern of the Government of India. Various other motions were not admitted as the Chair did not consider them to be either definite and urgent or of recent occurrence. In the United Provinces Legislative Council an adjournment motion regarding Mr. Montague's resignation was disallowed on 11th March 1922 on the ground that a resolution could not be moved on it.

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1 Central L A 9-6-1924, p 2812  
 2 „ „ 25-2-1924, p 925  
 3 „ „ 20-9-1921, p 581

In the Legislative Assembly a motion anticipating matter already appointed for discussion was disallowed. Similarly on 13th March, 1925, the late Pt. Moti Lal's adjournment motion to discuss the action of the Government in failing to provide an opportunity to the House to discuss the Reforms Enquiry Report was ruled out of order as it anticipated a motion of which notice had already been given by another member under the Home Department demand. Contrary to this, however, on 10th March, 1928 Mr. Jinnah's motion of adjournment to discuss the announcement regarding the Sandhurst Committee Report was declared in order although there were motions for reduction on the same matter under the Army grant which was soon to be discussed. The ground which the Chair gave in support of allowing the motion was that "no one could say with any degree of certainty that the (cut) motion would be reached. There is no reason why the Hon'ble member should take any risk." It was then finally ruled that the motion in such cases was not barred by anticipation.

In the Legislative Assembly on 25th February, 1926, Mr. T. C. Goswami sought to move the adjournment of the house to discuss the hunger strike of certain state prisoners and Sir Alexander Muddiman opposed the motion on the ground that he would not be in a position to give a proper reply on the matter. The President, however, ruled that Government not being in a position to give proper reply is no ground for disallowing a motion.

On Saturday, the 8th March, 1930 the President of the Legislative Assembly announced that, he had received notice of an adjournment motion in connection with imprisonment of Sardar Patel, but in view of the answer that had been given to a short notice



question on the same subject, suggested to the mover that he might wait till certain information had been obtained. A member then enquired if the motion would be in order then, the President said, "The chair would be prepared to waive urgency".

The conduct of the Chair cannot be discussed through any adjournment motion<sup>1</sup>. Nor can the question of privilege, or an attack on the Chair in a newspaper be discussed, through an adjournment motion<sup>2</sup> nor can the discretion of the Governor-General or Governor be questioned through a motion for adjournment<sup>3</sup>.

A motion for adjournment has also been ruled out of order for lack of authentic information on which it is based. In the Central Assembly on October 15, 1936 B. Mohan Lal Saksena asked for leave to move the adjournment of the house to consider the failure of the Government of India to stop interference by the U P Government in election affairs, alleging that 11 patwaris and 2 peons were suspended in Aligarh district for attending an election meeting addressed by Pt Jawahar Lal Nehru. The President said that he could not accept the motion based on a press report or a private telegram but allowed Mr Saksena time till the next day to produce evidence in support of his contention. Mr. Saksena however informed the next day that no further particulars were then available on which the President ruled the motion out of order.

At the conclusion of the discussion of a motion for adjournment the mover and the Government member in charge of it may reply and the only question that may be put is that "The House do now adjourn", pro-

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<sup>1</sup> Central L. A. 11-2-1935

<sup>2</sup> " " 4-9-1928.

<sup>3</sup> U. P. L. C. 4-4-1927

vided, that if the debate is not concluded within two hours it shall automatically terminate, and no question shall be put. If the motion is carried the house adjourns forthwith. If however it is lost or talked out the interrupted debate may be resumed at the point of interruption.

## 2. Other Rulings.

Adjournment motions regarding relations of British Govt. with foreign states is out of order unless Governor gives permission to allow its discussion in the House (U. P. L. A. 2-8-1937). The Subject matter of adjournment motion must be urgent (U. P. L. A. 2-9-1937). Discussion on Speaker cannot be the subject matter of an adjournment motion (U. P. L. A. 19-1-1938). An adjournment motion reflecting on a Court of Justice cannot be moved (U. P. L. A. 2-8-1938). Adjournment motion regarding Vizagapatam water-supply disallowed under rule 37 on the ground that it revived a matter already discussed in the same session (Madras L. A. 1938 Vol VI p. 10-18). Adjournment motion is not in order when the charge of positive act of commission brought against the authorities remains a question of proof. (Assam L. A. 22-2-1940). Adjournment motions regarding piecemeal discussion of various matters pertaining to a Government policy not in order (Assam L. A. 22-2-1940).

Procedure when notices of more than one adjournment motion are received in one day. On the 11th November, 1940 notices of more than one adjournment motion were received. After the House had given leave to move one adjournment motion on that day, Babu Rabindra Nath Aditya next rose to move for leave his adjournment motion. A point of order was then raised by the Hon'ble Maulavi Abdul

Matin Chaudhury whether more than one adjournment motion could be taken up on the same day

The Assam Speaker ruled "This point was raised in this House in 1938, when after an adjournment motion was allowed to be moved leave for another adjournment motion was asked for I did not decide that point then. Having regard to the urgency of the second motion that was intended to be moved I asked the honourable member to table that motion on the next day waiving urgency. Since then, the matter has received my earnest consideration, and I may tell the honourable member without divulging any secret that I took up this matter in the Presidents' and Speakers' Conference held in Simla in 1939. The matter was discussed there, and in the light of that discussion I have decided to follow the procedure that is followed in the Central Assembly. Now, that procedure is exactly like the procedure that we find in our rules. In the Central Assembly they allow leave to be asked for more than one adjournment motion to be moved on the same day in order to have the President's decision as to whether the motions are in order or not. Where notice of more than one adjournment motion is given for the same day, the adjournment motions are dealt with in the House in order of receipt. If leave to move is granted in respect of any of these motions the outstanding motions are left over for inclusion in the agenda of the following day. This process is continued from day to day until all the motions are disposed of.

"If the conduct of the Chair is to be debated with reference to any proceedings, then in that case, the only proper way of doing it is by means of a substantive motion to which, for instance an amendment can be moved and on which a distinct vote can be taken. As regards a motion of adjournment no amendment can be

moved, and the Chair holds that if an Honourable member wishes to ask the House to pass a vote of censure on the President because of the way he conducted certain proceedings, or, if an Honourable Member wants the House to consider, without implying any censure on the occupant of the Chair, whether the procedure followed by the Chair, and the way it conducted the proceedings in that matter was according to the Rules and Standing Orders or was in any way irregular, then the Chair thinks that this can be done either by a motion of no-confidence or some other appropriate procedure, but not by a motion of adjournment of the business of the House (Central L A Vol I (1935) 628)

On motion of adjournment, matters involving legislation cannot be discussed (Central L A Vol, V (1935) 347) The Mover of a motion has to make himself responsible for stating the facts correctly before the House, he must be ready with all the facts before he makes his motion (Central L A, Vol. IV (1937) 613) The proper time at which the Governor General is expected to pass an order, if he so chooses, disallowing a motion, notwithstanding that it has been consented to by the President, is after the consent of the President has been given Central L A Vol VI (1936) 451-52

In Adjournment Motions matter must be definite free from vagueness and confined to one specific matter. (Bihar L A, 13 10 1939), Adjournment Motion must be definite and must relate to only one specific matter of recent occurrence Must not revive discussion on a matter discussed in the same session. (Bihar L A, 1. 8 1939). In Adjournment Motions Matter must be definite and of recent occurrence (Bihar L A, 5-4-1939) A matter in which Government has taken action already cannot form the subject

of an Adjournment Motion. Assam L. A 19-3-45 Adjournment Motion is an encroachment on the business of the House and should not be brought when they do not strictly comply with the rules in that behalf (Assam L. A 13-11-1944) Adjournment Motion is not in order when a certain much-talked policy of Government is wanted to be discussed. (Assam L. A 13-3-1944) An Adjournment Motion is not in order, when it seeks to raise a discussion about a matter which is intimately connected with the policy adopted by Government very recently and anticipates a matter the discussion of which has been previously fixed (Assam L. A 15-3-1945) When the leader of a party sends notice of an adjournment motion and subsequently withdraws it without giving any proper explanation for doing so another Honourable Member of the same party cannot move the motion notice of which was subsequently given Central L. A Vol. VI (1935) 1313

Notice an Adjournment Motion can be withdrawn on the assurance given by Government that they would look into the matter (Bihar L. A 10 12 1937) Extraordinary procedure of moving an Adjournment Motion should not be resorted to so long as the ordinary means of discussing a thing is available (Bihar L. A 18 9 1939) Adjournment Motion must not revive discussion on a matter which has been discussed in the same session (Bihar L. A 3 10 1939) House gets concerned with an Adjournment Motion only when (i) the Chair has given its consent; and (ii) when member intending to move the motion has the leave of the House (Bihar L. A 1 8. 1938) Effect of Adjournment Motion is Censure on Government or at any rate an expression of disavowal of the house : (Bihar L. A. 25 7 38) Adjournment Motion, Discussion of the subject-matter of the motion when its

admissibility is under consideration. Reference to the merits of its subject-matter is not in order (Bihar L A 10 2 1939) No discussion on the merit of an Adjournment Motion before it is allowed to be moved (Bihar L A. 9 5. 1938) Adjournment Motion Discussion of a matter sub-judice cannot be allowed if there be an opportunity to discuss the matter during the voting of demands for grants (Bihar L.A. 20 3 1939) Discussion of an Adjournment Motion not allowed if it will interrupt financial business even the consideration of the admissibility of the notice of the motion cannot be taken up on such a day because that will mean interruption of financial business. (Bihar L A 18 8 1938) In Adjournment Motion taking up of a second motion on the same day on which the discussion of one has already been fixed not in order (Bihar L A 28 9 1939) In Adjournment motion discussion of a matter likely to come up before a court of law is not in order. (Bihar L A 18 9 1939) When the question of the admissibility of an adjournment motion is before the House amendment of the text thereof is not permissible (Bihar L A 25 7 1938) Adjournment Motion must relate to a matter of recent occurrence The repercussions of an incident happening from time to time do not constitute a matter for an adjournment motion after that incident was once discussed in the House (Bihar L A 13 10 1939) Adjournment Motion Discussion of a matter sub-judice not in order (Bihar L A. 13 2 1939) The wording of Adjournment Motion should be definite. An adjournment motion has to be taken up for discussion on the same day, unless Government has no information on the subject in which case it may be taken up on another day at the earliest (Bihar L. A. 25. 7. 1938) In Adjournment Motion matter must be definite and specific. Must not be sub-judice and must

not revive discussion of a policy already discussed in the same session (Bihar L A 10 2 1939) Adjournment Motion should be brought up at the earliest opportunity. Can't stand if Government say that facts alleged are totally wrong (Bihar L A 13 9 1937) In Adjournment Motion matter must concern the action or policy of Government Does not arise on the operation of law as it is (Bihar L A. 26 4 1939)

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## CHAPTER XV

### RESOLUTIONS

*"Wisdom is knowing what to do next Skill is knowing how to do it Virtue is doing it"*

*"The greatest truths are the simplest, and so are the greatest men"*

*Hare*

#### I. Scope of Resolutions.

A resolution means a motion for the purpose of discussing a matter of general public interest Every resolution is in the form of a specific recommendation addressed to the Governor-General or Governor, as the case may be No resolution can be moved, either in the Federal or Provincial legislature in regard to any of the following subjects, namely :-

(1) matters concerning the discharge of discretion and the exercise of individual judgment of the Governor-General or Governor, unless the Governor-General or Governor has allowed to do so.

(2) any matter connected with any Indian State, other than a matter with respect to which the Federal Legislature has power to make laws for that state, unless the Governor-General or Governor in his

discretion is satisfied that the matter affects federal or provincial interests or affects a British subject, and has given his consent to the matter being discussed.

(3) save with the consent of the Governor-General or Governor, any matter connected with the relation between His Majesty or Governor-General and any foreign State or province or ii any matter connected with the tribal areas or arising out of or affecting the administration of an excluded area, or iii any matter concerning the personal conduct of the Ruler of any Indian State or of the member of a ruling family thereof iv (in case of federal legislature only) on any action taken by the Governor-General in his discretion, in relations to the affairs of a Province

The decision of the Governor-General or Governor, as the case may be, on the point whether any resolution does or does not fulfil the above provisions is final

Besides this every resolution must relate to a matter of general public interest and no resolution is admissible which does not comply with the following conditions namely

(a) it will be clearly and precisely expressed and will raise substantially one definite issue

(b) it will not contain arguments, inference, ironical expressions or defamatory statements, nor will it refer to the conduct or character of persons except in their official or public capacity

The Chair decides on the admissibility of a resolution, and may disallow any resolution when in his opinion it does not comply with the rules. The House cannot discuss the disallowance of resolution by the Chair.

There is no objection to a resolution recommending the expenditure of a certain sum of money for



expenditure even without the previous sanction of the Governor-General or Governor, as is necessary in other cases, "because a resolution has only the force of a recommendation and the Government need not accept it." "It is my opinion that it is perfectly in order, for a member of this Council to recommend the spending or the giving of a grant of a certain amount of money for any purpose named".<sup>1</sup>

A resolution may be withdrawn. But withdrawal can be moved by mover only,<sup>2</sup> with the permission of the Chair. The mover may also authorise another member to move a resolution on his behalf, and the member so authorised may move accordingly. A resolution on the order paper may not be moved at all if the member so desires.

Amendments may be moved to a resolution but such amendments, should not be beyond the scope of the resolution. Amendments to resolution which enlarge the scope of a resolution altogether are out of order.<sup>3</sup>

When a resolution has been moved, no resolution or amendment raising substantially the same question is moved within a period prescribed by rules usually one year. When a resolution has been disallowed under the rules or has been withdrawn with the leave of the House, no resolution raising substantially the same question is moved during the same session.

The order of the resolutions on the agenda cannot be changed even with the agreement of the members concerned and the Chair. The only way to reach a later resolution is by not moving the previous resolutions and by losing their right to move them at all. In the Central Assembly on the 17th February,

1. U. P. L. C. P. 44 1924.

2. Central L. A. D. 17 9, 1929.

3. L. A. D. 28. 3 1921.

4. L. A. D. vol. 4. 1984 P. 3349.

1921, Rai Bahadur J N Mazumdar, whose resolution stood sixth on the list said that he had got the permission of the members in whose names the previous five resolutions stood, to move his resolution first and requested the permission of the Chair to do so. The Chair there-upon explained the procedure that "the ballot for bills and resolutions is designed to give members precedence for resolutions in a way which raise no personal questions (but) is designed in the interests of the Assembly as a whole. If the members choose after having gained their precedence, to dispense with it in favour of others that is not the business of the Chair, but it is the business of the Chair to warn the members that they are depriving themselves of rights legitimately won in the ballot. Therefore it is perfectly open for the hon'ble members to tell me with the authority of other members that they do not wish to move their resolutions and are prepared to withdraw them."

A copy of every resolution, which has been passed by the House, is forwarded to the Governor-General or Governor, as the case may be, but any such resolution has effect only as a recommendation. No amendment which enlarges the scope of a resolution can be moved (U P L C) L I, 366 An Honourable Member cannot introduce a new matter in his reply Central L A Vol IV (1938) 339

## 2. Addresses

Addresses are presented by the House to the Governor-General or Governor, as the case may be, usually on matters which come under his prerogative. The Bombay Legislative Council has made frequent use of this procedure. They presented an address to the Governor of Bombay on various occasions. One of these addresses moved on 16th March, 1934 prayed

the Governor to reconstitute the ministry, another moved on 27th March, 1935 was in connection with the sessions of the House. The one moved on 29th November, 1935 prayed the Governor to dissolve the Council and to ask for fresh elections, while on 22nd July, 1935 the Council made a request for the appointment of Council Secretaries under the Government of India Act 1919

## CHAPTER XVI

### LEGISLATIVE PROCEDURE

*"The best laws will be of no avail unless the younger are trained by habit and education in the spirit of the polity" —Aristotle*

#### 1. The Legislation in India

In a parliamentary democracy legislation is at once the most important field of work. During the early period of parliamentary history statutes were drafted and enacted by the Crown in Council on the petitions of the Commons. The King summoned Parliament, partly for advice, mainly for supply. Having stated his need for the demand, the Commons stated their need in matters of legislation. With the growth of democratic government the Houses of Parliament took into their own hands the drafting of statutes, and their demands for legislation became definite and urgent. These draft statutes are commonly known as bills. In the long run it became an established convention that the bills passed by the Parliament invariably received the Royal assent, hence the supremacy of Parliament.

Indian legislatures are however, not so independent. Their powers have been expressly limited by Acts of Parliament which created them. When an

Indian legislature enacts a law, it is bound to see that no provision is passed by them which encroaches upon the limitations imposed by the Government of India Act. These limitations have already been discussed in chapters V and VI. But when acting within these limits, the Indian legislatures are in no way an agent or delegate of the Imperial Parliament but have, and are intended to have, plenary powers of legislation as large and of the same nature as those of the Parliament itself. Any bill or any clause of a bill or any amendment which is beyond the limits of Indian legislatures is ruled out of order by the Chair and, even if by some mistake it is passed into law, it may not be recognised by courts.

## 2. Introduction of Bills

In this chapter we are more concerned with the procedure adopted in respect of legislation from the inception of a bill till it becomes an act and the practice followed in India is almost the same as exists in the British Parliament. A bill is not deemed to have been passed by the chambers unless it has been agreed to by both houses, either without amendment or with such amendments only as are agreed to by both houses. A bill may be introduced in either of the houses of the legislature. Although as a matter of practice official bills and Finance Bill have been introduced in the lower house. In case of a bill to be introduced by non-official members prior notice is to be given along with a copy of the bill and a copy of the previous sanction of the Governor or Governor-General if such is necessary under the rules. Besides, any proposal to increase taxation or involving expenditure cannot be made except on the recommendation of the Governor-General or the Governor as the case may be.

From this stage onwards the procedure relating to official and non-official bills is the same. Subject to the special procedure relating to recommended bills which has been discussed at the end of this chapter, every other bill has to pass through 3 stages, namely, the introduction stage, known as first reading, the consideration stage, known as second reading, and the passing stage, known as third reading. When a bill is to be introduced, it is included in the agenda of the day and is called upon by the Chair in its turn. Thereupon the member in charge of the bill rises in his seat and moves for leave to introduce it in the words, "I beg for leave to introduce the bill". At this stage the mover does not enter into details and makes as short a speech as possible. It is an established convention now that a motion for leave to introduce a bill is not opposed. But if it is opposed, the Chair after a brief explanatory statement from the member who moves and from the member who opposes the motion, without further debate, puts the question. If leave is not granted the bill does not move further but if it is granted the member on being called upon by the Chair again rises in his seat and simply says "I beg to introduce bill" and the bill is then deemed to have been introduced and is published in the official Gazette as soon as possible. But the motion for leave to introduce a bill is not necessary in the case of those official bills which have already been published in the Gazette under the direction of the Governor-General or Governor as the case may be. In such cases, it is formally introduced in the house by the member of the Government in charge. It cannot be opposed at this stage, for the simple reason that there is no motion before the house.

When a bill has been introduced its copies are

supplied to members. The member in charge may then move for its consideration or that the bill be referred to a select committee to be named, in the motion or that it be circulated for the purpose of eliciting public opinion. At this stage only the principles of the bill and its general provisions are discussed. The real question at this stage is whether the house desires legislation of the proposed type at all.

In the committee a bill is more thoroughly scrutinised which is almost impossible in a busy legislature. A committee may hear evidence and take expert opinion for the detailed consideration of the provisions of the bill. The select committee cannot reject the principle of the bill which has been accepted by the house. The proceedings of the select committee are held in camera and cannot be published before their presentation to the house. The United Provinces Government in 1922 had issued a press communique dealing with the proceedings of a select committee of the Council before it was presented to the house. It was considered to be a substantial breach of privilege of the house and the government member in charge had to apologise.

### 3. Consideration

After the committee stage, the bill is reported to the house and unless it is recommitted or recirculated for eliciting public opinion, it is taken into consideration as soon as possible. During this stage the bill is discussed clause by clause. Owing to the fact that a bill is subject to alteration during its passage, its title and preamble are dealt with after all its clauses are disposed of. The point will be clear from what actually took place in the Legislative Assembly in 1922. In the Finance bill of that year the title and preamble with regard to duty on salt were "to enhance".

As however the Assembly did not agree to the enhancement the word "enhance" was later changed into "fix"

During the consideration stage any member may propose an amendment to the bill which must be in proper form. But due notice which is usually 2 days must be given before the amendments may be moved. The presiding officer may in some cases however waive out the objection. A member not wishing to move an amendment of which he has given notice cannot be compelled to move the amendment.<sup>1</sup> The Chair is the sole authority of judging the relevancy of an amendment. An amendment is not admissible if it alters the scope of the bill. Motions of deletions of a clause are taken only after the motions to amend that clause are disposed of. This is meant to improve the clause if possible for in that case deletion may not be necessary at all. New clauses are taken where they suit most. This is known as the second reading of the bill.

#### 4. Passing Stage.

After all the clauses have been disposed of there comes the final or third reading. The actual motion at this stage is that the bill as amended (or otherwise) be passed. To such a motion no amendment may be moved except those which are only formal or consequential. The bill is then finally passed or rejected. In the speeches on the third reading of a bill, it is not open to members again to reopen the principle underlying the bill, and a member must confine himself to the application of the principle as enunciated in the clauses of the bill. This is all the scope of the third reading.

The member who introduces a bill may at any

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<sup>1</sup> U P L C. P. 53, 1926

stage of the bill move for leave to withdraw the bill, and if such leave is granted no further motion may be made with reference to the bill. But usually leave to withdraw a bill is granted only if there is no dissenting voice.

### 5. Procedure in the other House.

After a bill has been passed by the originating house, it is sent to the other house where the same process is repeated. If the other house passes it with amendments, the amendments are again put before the original house and the process is repeated unless there is complete concurrence.

But a bill passed by a house cannot be rejected by that very house on return from another house with amendments. On 12th February, 1929, on a motion that a certain amendment made by the Council of State in the Hindu Law of Inheritance (Amendment) Bill, which had been passed by the Assembly and sent up to the Council of State, be adopted, Pt. Madan Mohan Malaviya proceeded to attack the bill itself. The Chair intervened and observed, "All these arguments are in favour of rejecting this Bill. The Hon'ble Pandit knows very well that nothing he will say now can entitle this Assembly to reject this measure. The Hon'ble Pandit must therefore confine himself to the amendment before the house."

### 6. Joint Sitting and Concurrence.

In case of difference of opinion, there can be only two ways. Firstly that a bill may be allowed to lapse. Secondly, the fact of disagreement may be reported to the Governor-General or Governor, as the case may be, who may by notification refer the matter for decision to a joint sitting of both houses convened by him, after six months, in the case of Federal Legislature,



and 12 months in the case of the 'Provinces having two chambers, have elapsed from the date of the reception of the bill by the other chamber. In case a bill affects finance or any matter which concerns the discharge of functions in his discretion or is subject to his individual judgment, the Governor-General or Governor, as the case may be, may hold a joint session forthwith. Usually the President of the upper house presides over such sittings. A majority of the members is required to pass a bill or any amendment and the bill is then deemed to have been passed by both the houses.

Another method of composing difference between two houses is through a conference of equal number of members from both the houses.

### 7. Final Stage.

Ultimately all bills require the assent of the Governor or Governor-General. The Governor-General may give assent or withhold assent or reserve his assent. He can also request the reconsideration of a bill or of its amendments. He has also the power to forbid in the exercise of his special responsibility for the tranquillity of India, the discussion of a bill or amendment thereof. Similar powers exist for the Governor who may assent, refuse assent or reserve his assent or exercise his special powers. An Act assented to by the Governor-General or Governor may be disallowed by the Crown.

A bill does not lapse simply by reason of prorogation of the chambers. Similarly a bill pending in the upper house which has not been passed by lower house does not lapse by the dissolution of the lower house. But a bill which is pending in the lower house or which having been passed by the lower house is pending in the upper house, shall, subject to

certain conditions detailed in Section 31 of the Government of India Act, lapses on a dissolution of the lower house

### 8. Recommended Bill.

When the Governor-General or Governor has certified that the passage of a Bill in a particular form is essential for the safety, <sup>and</sup> tranquillity, the bill is laid before the House as if it has been passed by the other house notwithstanding that it raises questions substantially identical with one on which the chamber has already given a decision in the same session, and no dilatory motion can be made in respect of such a bill without the consent of the Member in charge of the Government. Where either chamber refuses to take a recommended bill into consideration or makes any alteration therein which is inconsistent with the form recommended, the Chair must if so requested by the Member in charge of the bill, endorse on the bill a certificate to the effect that the chamber has failed to pass the bill in the form recommended.

The bills when passed are published in the Government Gazette after they are duly assented to.

### 9. Rulings

Select Committee(s), Proceedings of An Honourable Member cannot refer to the—Central L. A. Vol VI (1937) 2348

Select committees Reports of—When the Legislative Assembly appoints a select committee, it directs the committee to report its conclusions to the House itself, and it has always been understood that the proceedings of such a committee are entirely confidential, so that what transpired during the deliberations of the Committee cannot be discussed even on the floor of the House. The Press and the public

are not admitted to the meetings of a Select Committee, and it has never been doubted that it is a breach of privilege to publish the Committee's report before it has been presented to the House. The privilege of the House covers the entire proceedings of a select committee and it is equally a breach of that privilege whether the proceedings or the report of a select committee is published *verbatim* or in detail or only a summary or select portions of its proceedings or its report is published before it is presented to the House. It is not permissible to a member of the select committee or to any one who has access to its proceedings to communicate directly or indirectly to the press any information regarding its proceedings including its report or any conclusion supposed to have been arrived at finally or tentatively before the report is presented to the House. It is equally expected of the Press to co-operate with the House in this matter and to abstain from publishing such information from whatever source it may have been received. Central L A Vol II (1940) 1183-84 )

Of the two inconsistent amendments to bill if one is carried by the House, the other cannot be moved, but it is then open to the mover of the second amendment to get the whole clause negatived when it is put to vote. Central L A Vol V (1937) 1694. On a motion to refer a Bill to Select Committee, discussion of the Statement of Objects and Reasons line by line is not relevant. Central L A Vol I (1938) 548. One clause alone, apart from a whole bill cannot be referred to a Select Committee but after the whole bill has come back from the Select Committee, a single clause may be re-committed. Central L A Vol. IV (1935) 3424. There should be no insinuation on the legislation of other provinces. Central L A II; 348. There is no right to move an amendment to a Bill involving expenditure on the revenues of the Province-

without Governor's recommendation (U P. L. C. I, 64)

If any Member wants to raise any question of privilege *e g*, attacks made in news-papers), there are other ways open than raising the question while speaking on an amendment to a Bill Central L A. Vol VIII (1936) 2056 A motion affecting changes in the composition of a Select Committee in regard to a certain bills saves it from lapsing even if no other motion is made with regard to the same during the two consecutive Sessions Central L A IV (1939) 3803. Bill—an amendment which seeks to create a charge on the revenues of India without the previous sanction of the Governor General is out of order Central L. A. Vol VI (1928) 2571- Detailed discussion of clauses not relevant on a motion to refer a Bill to Select Committee Central L A Vol I (1838) 546, 548 If there are no amendments on the notice paper a Bill need not be taken into consideration clause by clause (U P L C V, 394, 425, 427) Sanction of the Governor General is necessary if the proposed taxation in a bill is to be extended to another year Central L A, Vol IV (1935) 3744 The chair is not to call any Member by name It is the duty of an Honourable Member to rise in his place if he has an amendment in his name Central L A Vol IV (1939) 3449- The scope of a Bill is not to be judged merely from its Preamble or its Statement of Objects and Reasons alone, but from all its provisions Central L. A. Vol V (1939) 574-75 When consecutive clauses to which no amendments have been proposed are put together to the House by the Chair, it is open to any Honourable Member to discuss or oppose any of the clauses. Central L A. Vol I (1940) 447, If one recommended amendment is negatived by the House but other recommended amendments carried as also the motion

that the Bill be passed, the Bill would not be a Bill in the form recommended Central L A Vol IV (1935), 3836 If after a motion for select committee is moved, a motion for circulation is carried, the former motion automatically goes (Madras L A 1938 Vol VII 182) It is not permissible to refer to details at the stage of leave to introduce a Bill No speeches permitted at this stage, but only a brief statement. (Madras L A 1938 Vol VII 221)

Select Committee—Powers—A Select Committee has got the power to take evidence without being authorized by the House and to recommend that the Bill committed to it be dropped (Madras L A 1938 Vol VI 1162) That it is open to any member to oppose a whole clause in spite of the decision of the House to retain a part of it (U P L C LVIII, 680-681) At the third reading stage of a Bill, discussion should be confined to the amendment made at the second reading general observations about the Bill as a whole are not allowed. (Bombay L A 1939, p 893, 1953) It is competent for a Provincial Legislature to pass legislation affecting subjects enumerated in the Concurrent Legislative List in the Seventh Schedule to the Government of India Act, 1935 The legislation may then be reserved for the consideration of the Governor General, and, if sanction is obtained, the existing provisions relating to any subject in the said list will be superseded (Bombay L A 1939 1553) The scope of an amendment to a clause in a Bill is to be determined with reference to the entire Bill and not merely with reference to the chapter in which the particular clause may occur (Bombay L A. 1939, p. 377) In an amending Bill no member can go beyond its scope (U P L C, L II, 446)

A motion for the consideration of a Bill cannot be made unless the Bill is published in the *Gazette* (U. P.

L C LI, 512) It is open to any member to move for the deletion of any clause of a Bill after it has been considered and amended by the House (U. P. L. C. LVIII, 680-681.)

Principles of a Bill which has emerged out of a Select Committee cannot be argued at a latter stage. (Assam L C 15-3-32) Ministers' salaries can be varied by a Legislation and given retrospective effect from the day on which the Ministers were sworn in, if the salaries were not fixed during the tenure of office of the Ministers who seek to vary the salary provided by the Act (Assam L A 18-11-1944) In Bills (Circulated for Eliciting Public Opinion) Opinions should come through the Government agencies selected by the Department concerned and not direct (Assam L A 22-3-1945) When a Bill is so amended by the Select Committee that the provisions made therein go beyond the scope of the original Bill, the only two alternatives are either to withdraw the Bill and bring a new one or to recommend the Bill for deleting the clauses which are out of order (Assam L C 28-5-1935) Governor's recommendation for the introduction of a Bill under Section 82 (1) of the Government of India Act, 1935, is presumed to have been obtained when such a Bill is sponsored by Government, but recommendation under section 82 (3) is to be communicated to the Chamber through the Speaker (Assam L A 5-4-1939) Bill Amendment to a clause not consistent with decision of House in respect of a previous clause not in order (Bihar L. C. 1938. Vol II) Effect of acceptance by the House of a motion for circulation of a Bill A motion for the circulation of a Bill, is accepted, does not commit the House to the principle or principles of the Bill : (Bihar L. A. 4-5-1938.) Unless there is a motion for circulation of a Bill before the House there can be no

debate in this regard on a motion for reference of the Bill to Select Committee (Bihar L. A 21-12-37) Discussion on the principles of a Bill the subject-matter of which is the same as that of a resolution already discussed Acceptance of a resolution on a particular subject cannot stop debates relating to the principles of a Bill on the same subject (Bihar L. A. 21-12-1937) Scope of debate on a motion for consideration of a Bill as reported by the Select Committee When a motion that a Bill as reported by the Select Committee be taken into consideration is under discussion, a debate on the principles of the Bill even if it is done to oppose the motion is not in order, because the House stands committed to the principle by having already referred the Bill to a Select Committee. (Bihar L. A 21-9-1939) Right of a member who was on a Select Committee to move amendments to a Bill reported by that Committee A member of a Select Committee on a Bill may move an amendment to a Bill even if he signs the report without dissenting. (Bihar L. A 3-10-1939)

No general discussion permissible after an amendment made by the Council (Bihar L. A 31-5-1938) Introduction of substantially identical Bills in the same session not admissible (Bihar L. A 1939 Vol 4) Amendments to clauses Similar amendments to be moved one after another and the most comprehensive to be put first (Bihar L. C. 5-7-1938) When a Bill seeks indirect approval of the legislature on a particular matter, any amendment to it seeking direct approval of the Legislature on the same matter will not be outside the scope of the Bill and beyond the powers of the Legislature. (Assam L. A 9-3-45) Bills If a member of a Select Committee brings amendment to a Bill, when it is taken up clause by clause, it is no reflection on the Com-

mittee (Assam L. C. 12-3-1936) Members who are opposed to the very principle of a Bill should not go to the Select Committee (Assam L C 12-3-1936) When there are two amendments (1) for circulating a Bill for opinion and (2) for referring a Bill to a Select Committee to a motion for taking a Bill into consideration the motion for circulating the Bill for opinion to be taken up first (Assam L C 19-3-1934.) Only those members who accept the principle of a Bill should be chosen as members of the Select Committee (Assam L C 27-5-1935) Bill Debate Procedure No member can speak after the mover has replied (Bihar L C 9-5-1938) Bill For imposing or increasing any tax, cannot be introduced in the Legislative Council (Bihar L C 25-9-1939) Member to rise immediately to move motion for circulation after motion for reference to Select Committee made. (Bihar L C 10-10-1939)

Amendment to, Substitution of an amendment o Bill for one already set down in the agenda. A new amendment in place of one set down in the agenda can be moved only with the leave of the Chair. (Bihar L A 17. 11 1937) Bill Amendment to, Restriction in regard to the moving of amendments to a Bill returned by the Legislative Council as passed by it with amendments Only such amendments as may be relevant to, or consequential upon, the amendments made by the Council can at that stage be moved (Bihar L A 20 12. 1937) Bill Returned by the Council Stage when a debate can be raised in the Assembly on amendments made by the Council to a Bill of the Assembly General observation on a Bill or the effects of the amendments made there-to by the Legislative Council cannot be made after the amendments have been disposed of by the Assembly. Such observations can be made at an earlier stage



when the motion for the consideration of the amendments is before the House (Bihar L A 23 12 1937) Bill 'Select Committee Restriction on debate with regard to the proceedings of a Select Committee Proceedings of the Select Committees are confidential, and should not be referred to in course of debates in the House (Bihar L A 28-9 1939) Bill Amendment to, Fate of an amendment to an amendment when the latter is withdrawn In case of an amendment to a clause of a Bill, the former amendment lapses as soon as the latter amendment is withdrawn (Bihar L A 2-5-1938) Members have a right to ask for a copy of the opinion collected on a Bill even if circulated by Government and not by the House (Bihar L A 20-12-1938) It is open to the Chau to put an amendment to a Bill in parts (Bihar L A 3-5-1938) An amendment to a Bill to be in order must be strictly within its scope which is to be determined from the clauses and the preamble of the Bill (as it stands at the time the amendment is sought to be moved and not what it may or may not be at a future time), and the statement of its objects and reasons (Bihar L A 26-7-1938) Scope of debate on a motion for the consideration of a Bill as reported by a Select Committee When a motion that a Bill as reported by the Select Committee be taken into consideration is under discussion, a debate on the details of the various clauses not in order (Bihar L A 3-10-1939) Reference of a Bill to a Select Committee The stage at which a motion to this effect can be made in respect of a Bill circulated by the House for eliciting public opinion there on When a motion for the circulation of a Bill for eliciting public opinion is adopted, another motion for reference of the Bill to a Select Committee cannot be allowed to be made until the opinions in pursuance of the first motion have been

collected and laid before the House (Bihar L. A. 23-1-1939) Limitation of debate on a motion for reference of a Bill to a Select Committee On a motion for reference of a Bill to a Select Committee, discussion of only the general principles of the Bill is admissible any detailed discussion otherwise is not in order (Bihar L. A. 4-4-1939)

The Advocate-General may be a member of a Select Committee and subject to the restriction specified in section 64 of the Government of India Act, 1935 (Bihar L. A. 1-1-1939) Note of dissent Submission of an actual note of dissent necessary when a member dissents from the findings of a Select Committee Mere statement that a member signs the report of a Select Committee subject to a note of dissent is not enough unless the actual note of dissent is submitted (Bihar L. A. 3 10-1939) Bill Scope of debate on a motion for consideration of a Bill as reported by a Select Committee The general principles of the Bill cannot be raised at that stage, nor can individual clauses be discussed That discussion at this time should be confined to changes, if any, made by the Select Committee (Bihar L. A. 28-9-1939) No right of reply admissible to a member who has merely opposed a particular clause without moving any motion in that behalf Member who has merely opposed a particular clause without having moved any motion has no right of reply (Bihar L. A. 1937 vol II) After the total numbers of a Joint Select Committee on a Bill has already been settled by means of a resolution agreed to by both the Chambers the number cannot be increased any proposal for a change in the personnel can at that stage be only in the shape of substitution (Bihar L. A. 22-12-1937) Bill Debate procedure, No discussion on a clause of a Bill is in order after a clause has been put and

carried (Bihar L A 1-6-1938) Debate procedure: A second speech in connection with an amendment to a bill, by a member other than the mover of the amendment not admissible, but a personal explanation may be allowed (Bihar L A 30-5-1938)

## CHAPTER XVII

### FINANCIAL PROCEDURE

*He who controls the finance of the state controls the nation's policy "*

#### 1 The Budget

The Indian financial system is regulated by the budget system which was first started in the year 1860. The system consists of, preparing estimates for the revenue and expenditure for one year in advance and suggesting means for discrepancy, if any, between the revenues and expenditure of the state. Besides these estimates for the coming year, the Indian Budget includes the revised estimates of the year about to close and the "actuals" or closed accounts of the previous year. It is the starting of financial control by the executive as well as by the legislature. In other words the budget defines the object on which public money may legitimately be spent, and it also presumes the limit for the expenditure of money on specified objects which may not be exceeded and lastly it points out, if necessary, the necessity of raising of funds to meet the expenditure to be incurred on the public service.

All the estimates are submitted in the form of

demands for grant department-wise which can be made only on the recommendation of the Governor or Governor-General, as the case may be, Section 37 (1) of the Government of India Act provides —

A Bill or amendment making provision—

(a) for imposing or increasing tax, or

(b) for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Federation, or increasing the amount of any such expenditure, shall not be introduced or moved except on the recommendation of the Governor-General, and a bill making such provision shall not be introduced in the Council of State. Similar provisions have been made for the provincial legislatures. But bills imposing fines or other pecuniary penalties do not come under this category.

## 2. Non-votable items in the Federal Budget.

In the Federal Legislature each house may discuss and vote on the sums specified in the budget except those which are required to meet expenditure charged upon the revenues of Federation. These non-votable items have been specified in subsection (3) of Section 33 of the Government of India Act 1935. They are —

(a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is required to be made by Order in Council. (b) debt charges for which the Federation is liable, including interest, sinking fund charges, and redemption charges, and other expenditure relating to the raising of loans and the service and redemption

of debt (c) the salaries and allowances of minister, of counsellors, of the financial adviser, of the advocate-general, of chief commissioners, of the personal and secretarial staffs of the Governor-General and of the staff of the financial adviser (d) the salaries, allowances, and pensions payable to or in respect of judges of the Federal Court, and the pensions payable to or in respect of judges of any High Court (e) expenditure for the purpose of the discharge by the Governor-General of his functions with respect to defence and ecclesiastical affairs, his functions with respect to external affairs in so far as he is by or under this Act required in the exercise thereof to act in his discretion, his functions in or in relation to tribal areas, and his functions in relation to the administration of any territory in the direction and control of which he is under this Act required to act in his discretion provided that the sum so charged in any year in respect of expenditure on ecclesiastical affairs shall not exceed forty-two lakhs of rupees, exclusive of pension charge (f) the sums payable to His Majesty under this Act out of the revenues of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with Indian States (g) any grants for purposes connected with the administration of any areas in a Province which are for the time being excluded areas (h) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal (i) any other expenditure declared by this Act or any Act of the Federal Legislature to be so charged.

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation shall be decided by the Governor-General in his discretion.

But the house may discuss these sums except

those mentioned in (a) and (f) although they can not vote on them

### 3. Non-Votable Items in the Provincial Budget.

The position is slightly different in the provinces. In the provinces the budget may be presented to both the chambers of the legislature but the Legislative Assembly only can vote on sums specified therein, the upper house having little voice in financial matters. But none of the sums required to meet the expenditure charged upon the revenues of the Province is to be voted even by the Legislative Assembly. They have been specified in sub-section (3) of Section 78 of the Act. These non-votable items are —(a) The salary and allowances of the Governor and other expenditure relating to his office for which provision is required to be made by Order in Council (b) debt charges for which the Province is liable, including interest, sinking fund charges and redemption charges and other expenditure relating to the raising of loans and the service and redemption of debts (c) the salaries and allowances of ministers, of the Advocate General and of the personal and secretarial staff of the Governor, (d) expenditure in respect of the salaries and allowances of judges of any High Court (e) expenditure connected with the administration of any areas which are for the time being excluded areas, (f) any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal (g) any other expenditure declared by this Act or any Act of the Provincial Legislature to be so charged.

Any question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Province shall be decided by the Governor in his discretion.

But the provincial legislature may discuss any of these sums except those mentioned in (a) above without voting on any of them.

#### 4. General Discussion.

In India the budget is usually presented in the beginning of March each year so that all the demands as well as the proposals of taxation may be approved by the legislature before the next financial year begins. In the first year of the provincial autonomy, however, provision has been made by Order in Council for such approval within the first six months beginning from 1st April 1936 by the Governor of the province. The budget is presented simultaneously in both the houses and is accompanied by a speech from the Member of the Government in charge of the Finance. The speech reviews general economic condition of the year and states important variations between the budget and revised estimates of the revenue and expenditure of the year just about to close. Similar variations in the surplus or deficit of the closing year are also brought out. It also makes certain proposals for meeting the deficit or disposing of the surplus, as the case may be.

There is no discussion of the budget on the day on which it is presented to the house. After its presentation the budget is dealt with in two stages a general discussion and the voting of demands for grants.

The general discussion of the budget usually takes place a week after the presentation of the budget and for such time as the Governor or Governor-General, as the case may be, may allot for the purpose, which is usually three days. At this stage there is a discussion of the budget as a whole or any question of the

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1. The Government of India (Commencement and Transitory Provisions) order 1936, published in the Gazette of India of the 27th July 1936

principles involved therein, but not of the individual demands. A discussion of the demands is reserved at a later stage. No motion can be moved at this stage, nor can the budget be submitted to the vote of the house. In the general discussion even such subjects as are non-votable may be discussed by the house. A time limit of 20 minutes is usually prescribed for speeches during the general discussion and may further be modified if the programme so requires. The speeches enable the Government to see the trend of the house and to judge as to how their budget proposals may be dealt with on subsequent stages by the house.

### 5. Voting of Demands for grants.

After the general discussion is over, comes the second stage of the budget debate viz. the voting of demands. The demands for grant are put up in groups and each group is discussed usually for two days after which the next group is taken up.

For the first few years after the Reforms of 1919 there was no fixed order for the presentation of each demand, which naturally led to some inconvenience. Since the year 1923 however the practice has been for the Leader of the House to confer informally with non-official members of the various parties, consult their convenience and then issue a list giving the order in which the demands for grants are to be taken. This has been adopted on the analogy of the practice of the House of Commons and is based on the feeling that important subjects should be disposed of first, so that when the last day comes the house may not be hurried in their disposal.

Motions are then made to omit or reduce the demands for grant. Such motions are made with two objects; one is to effect economy and the other is to



obtain satisfaction or elicit information from Government on a particular point. In the first case a motion specifying the amount which is intended to be reduced from a particular item is made. These are known as substantial cuts. In the second case a motion of reduction of a nominal amount, say, Re. 1 or 10 or 100 is made, which is pressed to a division if the Government reply is considered unsatisfactory and may, in some cases, amount to a motion of censure. These are known as token cuts.

It is not unoften that sometimes these motions of reduction are made really to increase expenditure. This is so because the rules permit of no other way by which an increase in a particular item may be suggested by the house.

The Chair is the final authority to decide the order of the motions. The fact that such a motion appears on the order paper does not mean that the Chair has allowed that motion. A point of order can always be raised when a motion is attempted to be moved and it is always open to the Chair to rule that a motion is out of order.<sup>1</sup> But when a motion is admitted by the Chair, the mover is entitled to reply.<sup>2</sup>

The motions of reduction must be definite and intelligible. It was also suggested in the Legislative Assembly that the members moving them may add a short statement of the purpose or subject which they wanted to discuss on each motion so that it might facilitate the government to reply them on the spot<sup>3</sup> although it is not necessary under the rules. Motions of reduction must be relevant to the demand under discussion. A member should not

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1. Central L. A. 1931 Vol VI p. 1223

2. Central L. A. 1932 Vol II p. 1329

3. Central L. A. 16 2 25 D. 1091—93

speak beyond the scope of such a motion. Repetitions of questions substantially identical with the one on which the debate has already been raised is not allowed<sup>1</sup>. Motions of reduction cannot be moved by proxy. In the Legislative Assembly on the 16th March, 1921, Dr Nandlal wished to move a motion for reduction standing in the name of Rai Bahadur J. N. Majumdar. The Government asked for a ruling as to whether this was permissible. The President then observed "under the rules, he is not allowed to take over a motion from someone else." Motions for reduction of a demand for grant on matters involving change in legislation have been declared in order in the Legislative Assembly, although in the House of Commons there is a convention contrary to this.

Omni-bus motions for reduction are out of order. On the 14th March 1922, during the discussion on the demands for grant in the Legislative Assembly, Dr. Hari Singh Gour moved that all the demands be reduced by 10 per cent and the government asked for a ruling as to whether such a motion was in order, the President ruled, "A motion of this kind cannot be put from the Chair. The only motions which can be put from the Chair are those which refer to each individual grant. The motion as it stands is not in order. A general motion cannot be taken under an individual demand for grant."

Motions of reduction on non-votable items are out of order but general questions relating to non-votable expenditure can however be discussed as nominal reductions under votable expenditure. On March 13, 1923, Mr. N. M. Joshi moving a reduction

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1. Central L. A. 14 8 29 p. 1877-82  
 2. Central L. A. 9 8 26 P 2198.

under Miscellaneous Railway Expenditure—a votable item—proceeded to discuss annuities and sinking funds when objection was taken that ‘Sinking Funds’ was non-votable. The President agreed and ruled that “non-votable” items cannot be touched. But the next day, Sir (now Lord) Malcolm Hailey suggested that in view of the past practice the President may as an interim arrangement allow the house to discuss general questions relating to non-votable expenditure on nominal reductions of votable items.

When the last day of the days allotted for voting of grants is reached and the discussion is not finished the Chair under rules is required to put forthwith at fixed time, usually, 5 p m on that day every question necessary to dispose of all the outstanding matters in connection with demands for grants. This is technically known as guillotine. A guillotine is a device to bring the termination of financial discussion to a close for otherwise the discussion on the motions of reduction may perhaps continue for months and months together.

Where, in proposed Federation the Assembly have refused to assent to a demand, that demand is not to be submitted to the Council of State unless the Governor-General so directs, and where the Assembly have assented to a demand subject to a reduction of the amount specified in it, a demand for the reduced amount only is to be submitted to the Council of State, unless the Governor-General otherwise directs. In either of the said cases when the Governor-General gives directions to present the refused or reduced demand, the demand submitted to the Council of State shall not be for a greater amount than that originally demanded. If the Chambers differ with respect to any demand, the Governor-General is to summon the two cham-

bers to meet in a joint sitting for the purpose of discussing and voting on the demand on which they disagree, and the decision of the majority of the members of both Chambers present and voting is to be deemed to be the decision of the two Chambers. In the provinces however no such procedure is necessary as the Legislative Council have no right to vote on the demands and it is only the Legislative Assembly that determines the disposal of demands.

In case of reduction or refusal of a demand, the Governor-General, if he considers the reduced or refused amount necessary for the discharge of his special responsibilities or to meet sums charged on the revenues of Federation, may restore the amount but the amount restored should not exceed the amount originally asked for.

Similar procedure is laid down for the provinces where a special security is provided for the expenditure on European and Anglo-Indian education. If provision for this purpose has been made in the last complete year before the provincial autonomy comes into force, in each subsequent financial year, unless the Assembly by a majority of at least three-fourths of its members refuses the demand, the amount must be included to the extent of the average expenditure for ten years ended on March 31, 1933, unless total educational expenditure is reduced below that average and in that case only a proportionate reduction is allowed.

## 6 Arrangement and effect of cut motions.

In United Provinces the cut motions are arranged according to the budget sub-heads in the order of their receipt. No preference is given to any party in moving cut motions. In Bombay similarly, motions are arranged under each

major head in the order in which the major heads appear in the budget and as they are received without any priority of place. In Madras such motions are arranged in the following order—first censure motions, next motions of criticism, and then general discussion of policy and afterwards motions relating to items in the order in which they appear in the budget, and substantive cuts come last. And under each category only motions by party leaders are given preference. In the Punjab the largest reductions appear first, the smaller ones next and so on in a descending order according to the magnitude of the cut motion. In the Bengal Legislative Assembly, all parties are allowed to make a choice of their motions irrespective of their place in the budget estimate. This makes budget discussion more lively and real.

As regards effect of cut motions on the Government, it is a settled convention of the British constitution that not only a vote of no-confidence but a vote on any issue of importance e.g. a reduction in the demand presented by Government may also be fatal to the continuation of the ministry in power. It is of course for the ministry to decide as to what is a vital vote. In practice it may ignore on the assumption that it does not necessarily imply loss of confidence. But even such defeat, however trivial, if not fatal, is damaging and is usually taken as a note of warning for the weakening of its prestige and position as much as it is a definite weakening of the strength of its party ties. Tactically it is considered desirable for the Government not to accept defeat readily, for if a Government allows itself to be overridden even in minor matters, it encourages independence in its members which might lead to a more serious repercussion resulting in the ultimate defeat of Government on vital issues. Modern Governments, therefore, tend

to treat most questions as questions of confidence and try to avoid defeat as much as possible. But the defeat do come now and then and it may be interesting to note the many instances of defeats not being accepted in the British constitutional history.

Sir Robert Peel's Government was defeated in 1834 on an amendment several times in the House of Commons. In 1841 it was defeated on the sugar duties. In 1853 the Coalition Government was defeated three times in one week. Lord Rosebury's Government was defeated on a snap vote in 1894. Mr Balfour's Government was defeated in the committee of supply on the Irish question in 1905. Mr Mac-Donald's Government was defeated ten times between January and August 1924. In none of these cases the Government of the day resigned or appealed to the electorate as a consequence of these defeats. In 1924 Mr Mac-Donald enunciated the policy of such defeats, to the extent to which the Government could suffer defeat on its own proposals, but it must be remembered, it was then a minority Government, allowed to continue on sufferance.

"The Labour Government will go out if it is defeated upon substantial issues, issues of principle, issues which really matter. It will go out if the responsible leaders of either party or any party move a direct vote of non-confidence and carry that vote. If the House on matters non-essential, matters of mere opinion, matters that do not strike at the root of the proposals that we make, and do not destroy fundamentally the general intentions of the Government in introducing legislation—if the House wish to vary our propositions the House must take the responsibility for that variation—then a division on such amendments and questions as those will not be regarded as a vote of no-confidence."

Jennings in his book "Cabinet Government" lays down four factors which determine the attitude of Government to a Parliamentary defeat. The first is the loss of its prestige, the second is the strength of its own cohesion, the third, is the nature of the issue on which it has been defeated and the fourth is the importance of the proposal or matter on which it was defeated. A defeat therefore on an important part of the budget is obviously too important to be passed over. A definite statement that the Government will resign on a proposal if it is not accepted is a notice that the Government treats the motion as one of confidence.

## 7 Supplementary Grants.

The budget when once passed by the house, with or without alterations of the Governor-General or Governor, cannot be altered except with the permission of the house. If the government later discovers that an item has been inadvertently omitted or that demands which could not be foreseen at the time of presenting the budget have since arisen or that the amount allotted for any item, proves to be insufficient, the same formality has to be gone through as in the case of original demand. The government has to make a fresh demand, known as supplementary demand and submit fresh estimates to the house known as supplementary estimates. Supplementary estimates are nonetheless looked upon with particular jealousy by legislatures as they may amount to a breach of contract between the government and the legislature.

To the executive government also supplementary estimates prove very inconvenient as they tend to open healed sores and unearth unpleasant controversies. But supplementary estimates are a necessary evil and perhaps the lesser of the two, for if such estimates were to be totally stopped the executive

would by framing liberal estimates of expenditure at the beginning of the year heap up sufficient provision for reserves for unforeseen contingencies. On the other hand supplementary estimates give an opportunity of scrutinizing the administration during the year.

The subsequent procedure in the legislature in respect of the supplementary estimates is exactly the same as for the budget estimates. Supplementary estimates can be presented in any order. It has been ruled in the United Provinces Legislative Council on the 9th July, 1930 that an exposition of the policy of the Government while dealing with supplementary estimates is not in order. "Debate on supplementary and excess grants (see below) is restricted to the particulars contained in the estimates on which those grants are sought and to the application of the items which compose those grants, and the debate cannot touch the policy or the expenditure sanctioned on other heads, by the estimate on which the original grant was obtained except so far as such policy or expenditure is brought before the committee by the items contained in the supplementary or excess estimates."

## 8 Excess Grants

Sometimes it so happens that an excess is discovered only after the expiry of the financial year. In such a case supplementary estimates are impossible. To regularise the excess, however, an excess demand is presented the procedure with regard to this is the same as for the supplementary estimates.

## 9. Token Grants.

When a demand is made for a supplementary or an excess grant and it is desired to reappropriate



money from another grant the demand which is thus made is technically known as "Token Demand." That is to say, the demand is only for a nominal sum of money say Rs. 100 or Rs. 10 and it is explained in a separate statement how the balance would be met. This is done merely to bring the expenditure in question within the purview of the legislature.

### 10. Finance Committee.

There is a Finance Committee of the Legislature whose function is to scrutinise proposals for new votable expenditures, to sanction allotments out of lump sum grants, to suggest retrenchments and economy in expenditure and generally to assist the Finance Department by advising on such cases as may be referred to them. The cases in which supplementary grants and excess grants are required are also brought to the notice of the Finance Committee for opinion.

### 11. Ways and Means.

The voting of demands for grant completes only one part of the budget debate. It does not grant supplies to the executive government. Ways and means should also be found for raising the necessary funds. This is treated in a bill commonly known as the Finance Bill. But in some provinces the procedure is different. In addition to the standing taxation measures, bills are presented to the legislature to raise additional sums of money if necessary. Prior to the Reforms the practice in the Government of India was to put different proposals for different taxes in separate bills, but after the Reforms all the taxation proposals are included in one Finance Bill introduced year after year. It has been ruled in the Legislative Assembly during the discussion of the Finance Bill on

24th March, 1921 that the constitutional position of the chambers cannot be discussed on the amendments made in the Council of State.

## 12. Other Rulings.

During the discussion of annual budget it rests the House to decide the maximum time limit upto when they could sit on each day of the days allotted for the budget demands except on the last day allotted for the budget discussion. At the end of every two days allotted for a group of demands it is not necessary that the demands which had not been discussed should be put to the vote of the House. The only thing required by the Rules is that the demand under discussion at the end of the second day should be voted upon that very day. The other demands not presented should stand over till the last day (U P L A 15-9-1937). During the discussion of demands for grant, members were free to move motions of omission or reductions against the whole grant as also against the items composing the grant (U P L A 10-9-1937). Guillotine—Held that the hour for applying the guillotine on undiscussed demands may be extended up to 7-30 p m although it was fixed as 5 p m. in the rules, in view of the subsequent change in the concluding hour of sitting of the House from 5 p m to 7-30 p m (Madras L A 1938 Vol. VI 972-973). A member is under no obligation to move a cut motion he has given notice of if he is not ready to do so. (Madras L A 1938 Vol. VI. 447) Criticisms should be directed against the doings of the Ministry since its assumption of office (Madras L A 1938 Vol. VI. 331). Change in legislation—A matter which involves change of legislation cannot be raised on an estimate (Madras L. A. 1938 Vol VI. 131). Debate—Relevancy.—In a debate on a cut motion regarding

doings of the Ministry, reference to the details of the conduct of Ministers and Parliamentary Secretaries on the floor of the House, in the method of answering interpellations, making speeches, preparation of Bills, etc. held to be irrelevant and ruled out of order. (Madras L. A. 1938 Vol VI 329-30) General Policy—General Policy cannot be discussed on a cut motion which has a specific purpose (Madras L A 1938 Vol VI 227)

Budget Supplementary Scope of discussion—Discussion on the policy of the department relating to the particular items covered by the Supplementary demand, in order, but discussion of the general policy relating to the department, not in order (Bihar L A 22-8-38-Budget Supplementary Form of, Statement of expenditure Should contain adequate details of each scheme (Bihar L A. 25-3-1938) Budget Supplementary Demands for Grants Scope of discussion on When a demand initiates a new policy members are entitled to discuss that policy Otherwise discussion to be confined to item included in (Bihar L C 27-3-1939) Budget Supplementary cut motions, Debate procedure More than one cut motion on allied subjects falling under the same demand for grant may be moved and discussed together to facilitate discussion (Bihar L. A. 25-9-1939) Budget Supplementary Cut motions Debate procedure discussion of the general policy of Government on a motion of supplementary demand with respect to a particular project not in order (Bihar L A 25-9-1939) Budget Cut motions Debate procedure Identical motions A member in whose name there is a cut motion identical with the one under discussion can only speak on the latter and cannot be allowed to move the former (Bihar L. A 16-9-1937) Budget, Supplementary Cut Motion (1) Period to Notice. Sufficient time to be given to members by Government to enable

them to give notice of motions within the prescribed —

(2) Admissibility of cut motion From the mere fact that an item has been placed on the agenda, it does not follow that its admissibility has already been decided. (Bihar L A 14-12-1937). Budget Supplementary Cut motion Debate procedure discussion of the action of the Department other than one in respect of which the demand for grant has been asked for, out of order (Bihar L. A. 22-9-1939) Budget. Supplementary Cut motion Discussion of decisions of a court of law, e.g., that of the courts of a Rent Reduction Officer, out of order but discussions of the policy, if any, laid down by Government to be followed by such officer with respect to rent reduction proceedings, in order (Bihar L A. 22-9-1939)

Budget Cut motions Debate Procedure Conclusion of Debate A particular statement made on behalf of Government to clarify certain points raised by members as to the policy of Government, before the movers of cut motions had their chance of reply, does not conclude the debate (Bihar L A 24-1-1939) Budget Cut motion Debate procedure Second speech not permissible to a mover of a budget motion except by way of reply (Bihar L A 23-3-1938) Budget. Supplementary Cut motions. Debate procedure Discussion of a matter within the judicial discretion of officers, out of order (Bihar L A. 22-9-1939.)

It is only such of the members whose motions can be reached that can speak on the cut motions. (Madras L. A. 1938 Vol VI 83) No speech permitted in withdrawing a cut motion.. (Madras L. A. 1938 Vol. VI. 312)

Right to speak—No member including those who have given notice of budget motions can claim right of speech on any motion. (Madras L. A. 1938 Vol. VI. 8.) Scope defined—discussions on cut motions

should be limited to the administrative acts of the Government that is the main object of token cut motions. (Madras L. A. 1938 Vol VI 330.)

It is a well established rule that Honourable Members cannot discuss questions of policy on supplementary grants Central L. A. Vol III (1937) 2268. Broad questions of policy and general principles cannot be discussed on Demands for supplementary grants. Central L. A. Vol VI (1935) 1824, 1826, 1830-31, 1837. The Mover of a cut motion has got no right of reply. Central L. A. Vol. II (1936) 1747. It is extremely desirable that the Government should have sufficient notice, according to the Standing Order, of the cut motions that are to be moved by different Parties during the discussion of the General Budget (Central L. A. Vol II (1935) 1909, 1910.)

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## PART III

# ADMINISTRATIVE

### CHAPTER XVIII

### STATUTORY DRAFTING

*“One of the most difficult of the problems of modern legislation is how to reconcile the right of criticism and amendment which is properly claimed by a popular legislative assembly with the precision of language, the elegance and symmetry of form, which are the characteries of a good law”*

—Ilbert

#### 1. Essentials of bill drafting

So far we have been dealing with the structure of the legislatures in India with reference to their powers, composition and procedure followed in them. We shall now proceed to discuss the most conspicuous field, namely legislation, commonly known as statutory drafting or drafting of laws, is rather as difficult task requiring an intimate knowledge of law, considerable legislative experience and high drafting ability.

Montesquie and Austin both have placed great importance on the drafting of laws as often the substance of law is entirely changed by the manner of its formulation. The process of drafting is indeed a long and intricate one.

An able draftsman always keeps four things in mind. The first and foremost of them is to give a clear and unequivocal expression to the intentions of

the law makers. Ambiguity should as far as possible be avoided for the law courts interpret law mainly by following the language of the law and not by reference to the intentions of the legislatures. The same word should always be used to mean the same thing throughout. Names should be used for pronoun even at the cost of repetition. In fact law is a branch of knowledge which is next only to mathematics in accuracy. To secure this end it is essential that, before drafting a bill, its subject matter should be carefully studied and the drafter must also possess a thorough knowledge of the existing state of law and its practice as in case of doubt the courts always consider the previous law.

Secondly, the law should be economically worded. No more words should be used than are necessary to make the intention of the law clear. The superfluous words are bound to prolong discussions in the courts. This requires great care and skill. Hence there is a tendency to place bill-drafting in the hands of specialists who become skilled with practice and use terms which have already acquired a settled definition in the courts of law, and who by centralising the process are able to exclude unintentional and mutually destructive provisions.

In the third place the law should be as simple as possible. Technical language should be avoided where ordinary language is not ambiguous. Active voice of the verb is to be used in preference to the passive one.

Lastly, there should be uniformity in all the acts of the government. Divergent forms and expressions are bound to cause confusion. Every act must be fitted into a general framework. For the sake of uniformity every legislature has an act defining the various terms and expressions used in its statutes.

The Government of India as also the provincial governments have the General Clauses Act for the purpose. To sum up the form of the laws should be at once shorter, clearer, better expressed, uniform and less likely to provoke litigation.

In England statutory drafting is looked after by the office of draftsman, Parliamentary Counsel to the Treasury. The ministers and the leading officials in the department responsible for the bill cooperate with Counsel in the inception of bills and the amendments which arise during its process in Parliament. In the Government of India a senior member of the Indian Civil Service is in charge of this work, while in the provinces the work is entrusted to the judicial or Legislative Secretary or to some such experienced officer.

An act, so far as it is not finally passed by the legislature, is called a bill. A bill contains the following parts —

## 2. Arrangement of Clauses.

(1) Title Every bill has a title describing the nature of the proposed measure. This should be sufficiently wide to cover in general terms all the provisions of the bill and is amended if any amendment of the bill makes it necessary.

(2) Preamble The preamble of a bill gives in short the purpose and necessity for the enactment. In England the practice is now generally to dispense with the preamble. The Government of India Act of 1935 has no preamble. In India, however, the practice is to prefix a preamble to an act.

(3) The enacting formula is as follows — “It is hereby enacted as follows”. The English formula is however a more complicated one and runs as follows:



"Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and commons, in this present Parliament assembled, and by the authority of the same as follows —

(4) **Clauses** The body of a bill consists of a series of numbered clauses each with a description and title printed at the margin. Long clauses are divided into sub-clauses, and the sub-clauses may be further divided. Long and complicated bills are divided into parts and chapters.

A distinction may here be pointed out between a clause and section. So far as the bill is not finally passed by the legislature, its sub-divisions are called clauses when it becomes an act its clauses are called sections. In the bill itself they are referred to as sections, as the bill is drafted on the assumption that it would ultimately become law.

(5) **The first clause** The first clause of a bill in India generally consists of 3 sub-clauses. In one sub-clause it gives the short title of the bill. When the title of a bill is a long one, a short title is given for the convenience of a citation. "This act may be called the \_\_\_\_\_ of 19 \_\_\_\_". The short title is also given as a head line of the bill.

The second sub-clause gives the extent of application of the act, while a third gives a date when the act is to come into force.

(6) **Other clause** The subsequent clauses form the main body of the bill and they are arranged in such a way that the leading and general provisions are embodied in its early clauses while special, exceptional and local clauses are placed at the end.

(7) **Repealing clause** At the end of the bill is detailed in a schedule or clause any repeals that might have been contemplated in the bill.

(8) Schedules. At the end of most bills is formed a set of provisions called 'schedules'. These mainly contain matters of detail dependent on the provisions of the bill. A schedule is as much part of a bill as the main clauses.

(9) Statement of objects and reasons. In India it has been a long standing practice to append to every bill a "statement of objects and reasons" which gives the bill a historical background and a sort of commentary of the bill.

(10) Table of contents. When a bill is long one, a tabular "arrangement of clauses", as it is called in England, or "contents" as it is called in India is prefixed to the bill.

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## CHAPTER XIX

### THE INDIAN STATUTE BOOK.

*"We must insist that laws and regulations are not only not antagonistic to liberty but are the very condition of liberty"*—Ramsay Macdonald

#### I. The Multiplicity of Laws.

No account of the legislatures in India is complete without a brief survey of the laws passed by them. It may however be kept in mind that the Indian Legislatures are not a sovereign body. They are, so to say, a creation of British Parliament and Parliament has still right to legislate for India. Besides these, the Governor-General and Governors can make acts, regulations and ordinances which have the force of law. On the other hand the Hindus and Muhammadans have their personal laws. These various sources of law make the Indian Statute Book a very complicated one.

Before the transfer of India to the Crown the law was all the more in a state of general confusion. Sir Henry Cunningham described it as "hopelessly unwieldly, entangled and confusing." The first steps towards codification were taken in 1833 when a commission was appointed to prepare a Penal Code. Lord Macaulay, was the chief figure of the commission. The Code became law only in 1860 and a year later the Code of Criminal Procedure was passed. In October, 1921 a committee was appointed with the Hon'ble Mr. A. P. Muddiman, I C S. to deal with the question of statute law revision. The function of this committee was to consolidate and clarify the statute law of India and much improvement was made

## 2. Parliamentary Legislation.

We may however divide the Indian statute book under 3 main heads

The first of these are the Acts passed by Parliament which apply to India. These are of three kinds. Firstly those made directly for India e.g. the Government of India Act 1919 or that of 1935. Secondly those Acts of Parliament which in term apply to India as part of His Majesty's dominion e.g. certain provisions of the Merchant Shipping Act 1894 or the Territorial Waters Jurisdiction Act of 1878. Thirdly are Acts of Parliament which apply only to presidency towns and Rangoon, which for certain limited purposes are regarded British settlements.

Besides these acts there are Orders in Council made by His Majesty in Council and they have the force of law in this country. Royal Proclamations and a few rules which were made in England under English statutes also operate in India..

### 3. Indian Legislation.

A detailed study of legislation in India may be made from Sir Courteny Ilbert's book, "A brief Historical Survey of Parliamentary Legislation relating to India", published in 1922. The Indian Legislation is of 5 kinds. Firstly there are the old Bengal, Madras and Bombay regulations. The Bengal regulations were the earliest and they often exceeded the authority granted by Parliament. They were therefore collected in 1793 and passed by Lord Cornwallis in the shape of revised code, and the regulations contained in it date from that year and have been regarded as superseding and repealing all the regulations passed before that date. Later regulation making power was extended to the other two presidencies and continued up to 1834. "Down to that date which is an important epoch in the history of Indian legislation, there were five bodies of statute law in force in India. First there was the whole of English statute law existing in 1726, so far as it was applicable, which was introduced by the charter of George I. and which applied at least in the presidency towns. Secondly, all English Acts subsequent to that date which are expressly intended to any part of India. Thirdly, the legislations of the Governor General's Council which commence with the revised code of 1793, containing 48 regulations all passed on the same date (which embraced the result of 12 years antecedent legislation), and were continued down to the year 1834. They had force only in the territories within the presidency of Bengal. Fourthly, the Regulations of the Madras Council, which spread over the period of 32 years, viz. from 1802 to 1834, and are in force in the Presi-

deney of Fort St. George. Fifthly, the regulations of the Bombay Code, which began with the revised code of Mr. Mount Stuart Elphinstone in 1827, comprising the result of 28½ years of previous legislation, were and also continued, till 1834, having force and validity in the Presidency of Fort St. David." (Cowell's History and Constitution of the Courts and Legislative Authorities in India, 5th ed. p. 67.) Many of these regulations have been extended to other provinces with or without modifications, either by notification or by express enactment and although most of these have since been repealed yet many of them are still in force.

In the second series come the Acts of the Governor-General in Council after 1833 now called the Acts of the Indian Legislature and the Acts of the Governor-General which are certified under Section 67 (B) as also the acts certified by the Governor of a Province under Section 72 (E) of the Government of India Act 1919. Thirdly the regulations under Section 71 of the Government of India Act 1919, which are usually made for backward tracts. The object of such provisions is to provide more elastic procedure for law making. Fourthly the ordinances made by the Governor-General under Section 72 of the Government of India Act 1919 in time of emergency. Lastly are acts of the local legislatures.

Under the Government of India Act 1935 the Governor-General can make ordinances and acts and may also issue proclamations. Similar provisions have been made for the Governor in Sections 80 to 90 and 95.

#### 4. Derivative Legislation.

The practice of leaving subordinate details of

legislation to be worked out by rules and orders has been widely established in India. There are, therefore statutory rules, orders, regulations and notifications under the authority of Indian Acts and also those under the authority of Acts of Parliament. Besides, there are rules, laws, and regulations made by the Governor or Governor-General in Council for Non-Regulation Provinces prior to 1861, which were confirmed by Section 25 of the Indian Councils Act 1861, which have also the force of law.

### 5. Indian Statute Book under the New Constitution.

With a clear-cut division of subjects under the new constitution, the Indian statute book needs revision. A thousand provincial and 600 central acts passed during the last 143 years have to be revised and brought into line with the new constitutional machinery. The task was entrusted to Sir B. N. Ray, a very distinguished member of the Indian Civil Service and one of the ablest Judges in the High Courts of India. These figures exclude amending acts and when it is remembered that these acts were passed during the past 143 years since when both the legislative and administrative machinery has undergone revolutionary changes, the immensity of the task is apparent. It is probably the first attempt after Lord Cornwallis' revised Code of 1793. The previous reformed constitutions never attempted this work and merely safeguarded the position by passing a general clause stating that the authority proposed in the act took the place of that in the previous acts. This left to the lawyers to do the main job of hunting out appropriate authority and legal basis for various legislative and administrative actions. Now every statute

has to be revised and expressed in correct technical language.

A further complication has been caused by the fact that a number of principles involved in the statute law require authoritative interpretation by the law officers of the Crown and India Office, and if the experience of Canada is any guide, the revision of the statutes however, word perfect, may leave a large scope for lawyers to move the Federal Court. It may be noted that in Canada although there are only two lists, Federal and Provincial, no less than 1000 leading cases were found on them. The Indian constitution gives three lists, Federal, Provincial and Concurrent and one may not be surprised if these provide the Federal Court an amount of work which may not be anticipated by the framers of the constitution.

Leaving aside the principles involved, the mere revision of the statute is itself a difficult task. One such subject are the Bengal, Madras and Bombay regulations. The former vests the authority in the central government and the latter two in the provincial governments. Internal security under the new constitution is a provincial subject. The problem arises as to how to revise these regulations. Similarly there are difficulties in the case of the University Acts and Railway Acts. Order in Council in respect of the adaptation of statutes which incorporating changes in the existing statutes has already been passed.

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## CHAPTER XX

### THE ADMINISTRATIVE SYSTEM

*"Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying position duly subordinate to that of the ministers . . . yet possessing sufficient independence, character, ability and experience to be able to advise, assist and to some extent influence those who are from time to time set over them"*

#### i: The Administrative Organisation.

"The backbone of the British administration in India", says Anderson, "is the District Officer, known as the Collector in the Regulation Provinces and the Deputy Commissioner in the Non-Regulation Provinces. The District Officer is generally a member of the Indian Civil Service. He is the real executive chief and administrator of the whole district and is supreme over all other officers in the district." The average size of a district extends about 4500 sq. miles with an average population of a million souls. The districts number 271 all over British India, each varying in size and population. One district, Vizagapatam in Madras has an area of more than 17000 sq. miles with a population of over 3 millions and exceeds Denmark in both respects. In Bengal Mymensingh district has a population exceeding that of Switzerland. Districts are divided into Tahsils or Taluqas and they are grouped into divisions headed by a Commissioner. In Madras, however, there are no divisions. Between the Commissioner and the Provincial Governors in all provinces except in Bombay there is the Board of Revenue or its equivalent a Financial Commissioner.



There are other heads of various departments e. g. the Inspector General of Police and Director of Public Instructions etc. At the head of the provincial administration is the Secretariat. Here all the members of government have their offices. The Secretariat is for the convenience of its own working, also sub-divided into departments and in charge of one or more of these departments is the Secretary to Government who has under him a number of subordinate secretaries and a large clerical staff to assist him. The organisation of the Provincial Secretariat and the Central Secretariat follow the same line. The rules of business, which regulate the conduct of the work of the departments are, under powers conferred by the Government of India Act 1919, framed for the Provincial Secretariats by the Governor-General. Decisions on all important matters are taken by the Members of the Government of India in consultation with Governor-General and by the Executive Councillors and Ministers in consultation with the Governors. It is usual for the Governor-General or Governor to give interview not only to the members of his cabinet, but also to the Secretaries to the various departments usually once a week.

## 2. Administrative Services.

The members of the Government have largely to depend for general and technical advice upon the district and headquarter officers who form the framework of the whole system of administration. They are mostly members of the All-India Services. Besides, there is a large number of provincial and subordinate servants who form a huge bulk of the public services in India. The chief distinction between the All-India Services and the Provincial and subordinate services is, that while the former are

appointed by the Secretary of State, the latter two are appointed by the Secretary of State. The important rights of the All-India Services are —

“An All-India Service Officer cannot be dismissed from his service by any other authority than the Secretary of State. He has a right of appeal to that body, if he is adversely dealt with in any important disciplinary matters. The Governor of a province is required to examine the complaint of any such officer who thinks himself wronged by an official superior and to redress the grievance, if he thinks it equitable to do so. No order affecting his emoluments adversely and no order of censure on him can be passed without the personal concurrence of the Governor and orders for his posting to appointments also require the personal concurrence of the Governor. His salary and ‘pension,’ and sums payable to his dependents, are not subject to the vote of any Indian Legislatures.” On the introduction of the Reforms of 1919 they were given the option to retire before they had completed the normal full service on a pension proportionate to their length of service, if the changed condition did not suit them. In fact “345 officers of the All-India Services retired under these special terms by the end of 1924. By far the greatest number were officers of from 10 to 25 years service”.

In 1924 the strength of the All-India Services was as shown in the following table —

	Strength
(1) Indian Civil Service	1,350
(2) Indian Police Service	732
(3) Indian Forest Service (including the Forest Engineers Service).	417
(4) Indian Service of Engineers (comprising an Irrigation Branch and a Roads and Buildings Branch).	728

(5) Indian Educational Service.	421
(6) Indian Agricultural Service.	157
(7) Indian Veterinary Service.	54
(8) Indian Medical Service (Civil).	420

Total 4,279

### 3. Growth of the Civil Services.

It will not be out of place to trace briefly the growth of the All-India Services. In the early days the services of the East India Company composed of 3 grades—writers, factors and merchants. There was much of corruption amongst the servants of the Company as they carried on trade side by side, and the training of the servants was also utterly unsatisfactory. To remedy these defects Lord Cornwallis in 1793 organised the public services on a more satisfactory basis. Every civil servant was then to enter into a covenant not to engage into trade nor receive presents from the 'natives', and to subscribe to the pension. Their emoluments were however substantively increased. These servants were to be nominated by the Directors of the Company but this right was taken away in 1853 when the services were thrown open to competition amongst natural born subjects of Her Majesty. After recruitment all these servants were given due training. The present Indian Civil Service has maintained all these principles with slight modifications and even now they are called covenanted civilians.

The police force was reorganised in 1860 on the recommendation of a commission. Appointment to higher offices were made from the military forces, but from 1893 they were recruited by a competitive examination in England, a smaller number of appointments

were made in India by nomination and examination for which Indians were also eligible

The Engineering service was filled after 1871 mainly from men trained at Cooper's Hill and later on Indian Engineering Colleges were established at Roorkee, Bombay and Madras while some recruits came from Royal Engineers. Similarly the Indian Forest Service was organised after 1866 and the Education services were created after 1865. The Indian Medical Service was primarily military in purpose but it lent its officers for civil work

#### 4. Policy of Association'

After the transfer of India to the Crown in 1858 the Secretary of State took the place of the Board of Directors, but the competitive examination was still held in London so that few Indians could compete and the demand for the inclusion of Indians in these services increased every day. As a result of this the system of "Statutory Civil Service" as against "Covenanted Civil Service" was introduced in 1879 to take Indians by nomination forming one sixth of the total appointment. But the system did not find favour with Indian opinion and the Public Service Commission which was appointed to go into this question recommended in 1886 that a proportion of the posts for which the Indian Civil Service is primarily recruited are to be "listed", i.e. reserved for selected members of the Provincial Civil Service. The Islington Commission that was appointed in 1913 to suggest improvements made further suggestions. Mr Montague and Lord Chelmsford proposed that recruitment in England was to be supplemented by a 33% recruitment in India.

The Assembly urged more Indianisation, having passed a resolution to that effect, and the Government

of India later appointed the Lee Commission to go into the question. For the Indian Civil Service it recommended, that 20% of the superior posts should be made "listed" and that direct recruitment in future should be Indian and European in equal numbers. For the Indian Police Service direct recruitment was to be in the proportion of 5 Europeans to 3 Indians, allowing 20% recruitment from Provincial Service. In the case of Forest, it was 75% Indians and 25% Europeans, for the Indian Service of Engineers it was half with 20% reserved for the Provincial Officers by promotion.

The statutory Commission reviewed the place of Indianisation "In 1928 in the department known as General Administration which includes the district officers, there were in round figures 630 Europeans out of a total of 5500, if the lower classes of subordinates are excluded" In the Police Services as a whole, there were 600 European Officer and nearly 800 European police sergeants, out of a total of approximately 187,000. In the Civil Medical Departments, there were 200 Europeans in a total of nearly 6,000 fully or partly qualified medical men

"In the Education Services, there are 200 Europeans out of a total of about 1,500 officers in the higher grades. The subordinate services (which also include men of higher education, mainly graduates of Indian Universities) add 11,000 more to the total." In the Forest Services, there were 240 Europeans in a total of 1,600 and in the Engineering Department, 500 Europeans in a total of 7,500. The higher staff of Railways consists of about 1500 Europeans and 700 Indians the intermediate grades contain 2,000 Europeans out of 9,000. The total number of employees on these rail-

ways is over 800,000. In the Judicial Department from the High Courts down to the lowest grade of judges, there are 230 Europeans out of 2,500.

## 5 Service in The New Constitution.

Under the Government of India Act, 1935, the Secretary of State is to continue to make appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service. He is also authorised to make appointments to any service or services which he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any function of the Governor-General which the Governor-General is by or under the Act required to exercise in his discretion.

The Secretary of State is empowered by Section 247 to regulate the conditions of service of all persons appointed by him and full control is reserved to His Majesty and the Secretary of State over defence and political Services.

Provisions have also been made to protect the services against unlawful dismissal or reduction in rank and for safeguarding the pensions and conditions of service of public servants. Thus no person can be removed by any authority subordinate to that which appointed him and before dismissal or reduction in pay or rank he must be given an opportunity to defend himself. In future, appointments will normally be made for federal services by the Governor-General, and for the provincial services by the Governor. They will also make regulations concerning the services pertaining to their respective governments.

Under Section 264, Federal, and Provincial

Public service Commissions have been established. Provision is also made whereby the same Provincial Commission may serve two or more Provinces jointly or alternatively, it will be open to a province to make use of the services of the Federal Public Service Commissions, subject to an agreement with the Federal authorities. The functions of the Public Services Commission include holding examinations for entrance to the services and they are 'normally to be consulted' on the methods of recruitment, the principles of making appointment, promotions and suitability of candidates, disciplinary matters and claims for payment of expenses incurred by officer in defending legal proceedings or pensions or injury. Their functions may be extended by acts of legislatures and their expenses will be met by the provinces 'concerned'. Their personnel will be recruited and controlled by the Governor.

## 6. Safeguards for Services

### (a) *General Safeguards*

(1) No person can be dismissed from service by an authority subordinate to that by which he was appointed.

(2) No person can be dismissed or reduced in rank until he has been given a reasonable opportunity to show cause against the action proposed to be taken in regard to him.

(3) The salaries, allowances and pensions, payable to persons appointed before 1st April, 1924, to a post classified as superior shall be charged on the revenues of the Federation or the province, as the case may be.

(4) No civil post, which immediately before the introduction of the provincial part of the new constitution was a post in Central Service (Class I or

Class II) a Railway Service (Class I or Class II) or a Provincial Service, shall, if its abolition would adversely affect any member of the Service, be abolished except by the Governor-General exercising his individual judgment, or the Governor exercising his individual judgment according as the post relates to a Federal or Provincial department.

(5) In the event of the premature abolition of a post held by a person having special qualifications, and not being a regular member of the civil service of the Crown in India, such compensation as may be deemed necessary by the Governor-General or the Governor, as the case may be shall be payable to that person.

(6) No order which adversely affects the conditions of service of a person serving before the introduction of the new constitution can be made except by an authority which would have been competent to make such order on 8th March, 1926 or by some person empowered by the Secretary of State, subject to the right of appeal.

(7) Nothing limits or abridges the power of the Secretary of State, the Governor-General, or the Governor to deal with the case of any person serving in a civil capacity in India in such manner as may appear to him to be just and equitable.

In addition to the foregoing safeguards which apply to Services in general, the following special Safeguards are guaranteed to officers recruited by the Secretary of State

(b) *Special Safeguards*

(1) The salary, allowances and pensions payable to such officers are charged on the revenues of the Federation or the Province as the case may be

(2) No rules can affect adversely the remuneration or pensions payable to such officers.

(3) Questions relating to promotion, leave not



less than three months, suspension, etc., of such officers are to be decided by the Governor-General or by the Governor, as the case may be, exercising his individual judgment

(4) If such an officer feels aggrieved by an order affecting his conditions of service, he can complain to the Governor-General or the Governor, as the case may be

(5) No order punishing, or formally censuring such an officer, or affecting adversely his emoluments or rights in respect of pension can be made except by the Governor-General or the Governor exercising his individual judgment. Such an order may be appealed against to the Secretary of State

(6) If the conditions of service of such an officer are adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to any such person, he may grant compensation which he may consider just and equitable.

### Special Responsibility.

In addition to the above statutory safeguards, the Governor-General and the Governors have been charged with the Special Responsibility of securing to the public services all rights provided for them by the Government of India Act, 1935, and the safeguarding of their legitimate interests.

## CHAPTER XXI

### A BRIEF SURVEY OF THE INDIAN FINANCE

*"Patch by patch is good housewifery, but patch upon patch is plain beggary"*

#### 1. Finance under the Company.

Till 1774 the 3 presidencies were absolutely in

dependent of one another and were individually subordinate to the authorities in London. After the Regulating Act and the Pitt's India Act of 1783 the process of centralisation began. As such all taxes were levied and paid to the central government and the provincial governments remained entirely dependent on annual allotments by the central government for the maintenance of their administration and even the most trivial expenditure required the sanction of the Government of India. Centralisation reached its zenith by the Charter Act of 1833 and the arrangement continued even after the Government of India was transferred to the Crown after the Mutiny.

The early policy of the Company was to maximise the revenue and to minimise the expenditure in order to declare a satisfactory dividend. Kaye gives the following account of the increasing revenue: "Under the administration of Lord Cornwallis 1792-93, the Indian revenue amounted to 8 millions of English money. Under Wellesley's administration in 1805 it had risen to nearly 14 millions. At the close of Lord Minto's period of Government in 1813-14 it was set down at 17 millions under his successor Lord Hastings in 1821-22 it exceeded 21 millions. In 1852, the gross revenue was estimated at 29 millions."

In spite of the continuous increase of revenue, finances of the Company were unsatisfactory on account of Wars, which alarmingly added to the debt of the Company. The Company had therefore to approach to Parliament for assistance. At the time of the renewal of the Charter in 1813, an important change was made in the system of keeping accounts of the Company. From 1765 to 1813 the East India Company did not distinguish between its territorial and commercial expenditure. But the charter Act of 1813 made it necessary for the Company to sepa-

rate these accounts. Still the period from 1813 to 1835 ended with an increase of 17 million pounds in the public debt. In 1833 the Company was deprived of its last traces of commercial monopoly and the Indian Exchequer paid £600000 for dividends to proprietors of the Indian Stock, and the debt therefore rose from 39 4 million pounds in 1829 to roughly 60 million pounds in 1850.

The main sources of the revenue of India were land revenue, royalties on salt, customs and internal transit duties. The last duty was abolished in 1842 but others continued to expand. At the time of the Mutiny, land revenue was however the most important source yielding nearly two-thirds of the total revenue of country, while salt and opium contributed over a fourth.

## 2. Financial Devolution

The reorganisation of British India on its transfer to the Crown in 1858 was not accomplished by any substantial change in the financial system. In 1859 Mr James Wilson, who took charge of financial administration had to meet a great fiscal crisis. A debt of £42,000,000 was added on account of Mutiny, thus making the total debt of £98,000,000, while the year 1859-60 showed a deficit of £72,50000. He, therefore, considerably reduced the military charges which in 1850-60 absorbed more than half the total revenue of India, reformed customs tariff and introduced the income tax in India for the first time. Among his financial reforms were the creation of a state paper currency and the establishment of a new system of accounts and of an Audit Board. He could hardly initiate any devolution to the provinces, when he died after a short regime of ten months. But the result

of his labours was that in 1863 the deficit was a thing of the past. The total revenue of the whole of India in 1860 was about 64 crores of rupees

Ten years later during the viceroyalty of Lord Mayo, important steps towards financial decentralisation took place in India. The administration of certain departments was transferred to the provincial governments, which were given a fixed grant for this purpose, in addition to the departmental receipts, and were also for the first time authorised to allot the revenues assigned to them at their discretion, subject to certain financial rules. The result of this change was that the administration of provincial subjects improved. But still the provinces had little inducement to develop their resources. The success of this measure provided justification for further decentralisation and consequently during the viceroyalty of Lord Lytton in 1877, important heads of revenue e.g. stamp duties, alcoholic excess and income tax collected in the provinces, were now provincialised, while the responsibility of provinces in regard to expenditure was extended to the departments of land revenue, general administration, law and justice

Besides these provincial heads there were certain heads whose income was divided between the central and provincial governments. Here for the first time arose a classification of revenue heads into central, provincial and divided. Settlement on these lines were made with the provinces for 5 years in 1882, and were revised in 1887, 1892 and 1897.

As the functions of the provincial governments slowly expanded and began to spread into the sphere of social services, financial settlements with them began to assume a quasi-permanent character, but until

the introduction of Reforms of 1919, special grants, recurring as well as non-recurring, continued to be an important feature of the system, and they were definitely utilized for the purpose of stimulating and controlling the development of provincial services such as education and sanitation.

### 5. The Indian Finance After 1919

The Montague-Chelmsford Reforms are an important landmark in the history of financial devolution in India. The so-called divided heads of revenue and expenditure were abolished, and the subjects of income and expenditure were either wholly centralised or provincialised.

Before the Reforms the provincial budgets were included in the budget of the Government of India. But after the Reforms almost complete freedom was given to provinces in the preparation of their respective budgets. Only the Government of India has to be supplied with some information regarding loans and famine insurance fund. The provinces were also allowed to levy taxes.

It was, however, discovered that the Government of India would suffer a deficit of about 10 crores as a result of the redistribution of the heads of revenue and expenditure. The Meston Report therefore surveyed the relative position and recommended the method of contribution to the Central Government by the Provinces which, it was hoped, will have a surplus. The principle was accepted and the contributions to be made by the provinces to meet the central deficit varied widely in amount from 348 lakhs in the case of Madras, 240 lakhs in the case of United Provinces and 175 lakhs in the case of the Punjab, to 63 lakhs from Bengal, 56 from Bombay, 22

from Central Provinces and 15 from Assam and 64 lakhs for Burma. Bihar and Orissa was to make no contribution at all. Subsequently the central sources developed and the contributions were gradually reduced and finally extinguished in 1927-28.

But the condition of the provincial finances was far from satisfactory. To some extent it was also due to the inelastic sources of revenue of the provincial governments which had deficit budget, year and after year. Since the Montague-Chelmsford Reforms, out of 15 years, excluding the Budget year 1936-37, the United Provinces had as many as 11 years of deficit and only 4 years of surplus. The accumulated deficit was Rs. 3,63,45,000. The Presidency of Madras which fared best had 5 years of deficit and 10 years of surplus. The accumulated surplus was Rs. 5,38,83,000. The position of other provinces varies in between these two extremes. Thus the Presidency of Bombay had 9 years of deficit and 6 years of surplus. Their accumulated progressive deficit was 583 lakhs. In Bengal, which has always had a very special complaint to make against the Meston Settlement due to the fact that their permanent settlement does not enable Bengal to increase its land revenue and that more proceeds from their commercial taxes are absorbed by the Government of India, the years of deficit have been 9 and their years of surplus, 6. Their accumulated progressive deficit is Rs. 8,45,51,000. In the Punjab, there were 7 years of deficit and 8 years of surplus, and they have an accumulated progressive surplus of Rs. 79,79,000. Bihar has 9 years of deficit and 6 of surplus, their accumulated deficit is Rs. 73,67,000. Central Provinces have 8 years of deficit and 7 years of surplus, their accumulated deficit is Rs. 1,64,93,000. In Assam there were 10 years of deficit and 5 of surplus. Their

## PROVINCIAL REVENUES

(In Lakhs of Rupees)

## Budget Estimates, 1943-44

Principal Heads of Revenue	Vidras	Bombay	Ben-gal	U P	C P	Assam	Punjab	Bihar	Orissa	Sind	NW P	Total of Heads of Revenue
Land Revenue	41	3,86	868	6,29	260	140	5,92†	1,35	50	41	20	31,07
Provincial Excise Duties	429	288	280	2,07	76	26	180	1,27	36	46	10	16,05
Stamps	201	1,4	2,30	1,45	39	13	77	1,04	20	18	7	9,88
Forests	72	1,7	33	1,28	109	30	53	11	6	9	13	5,91
Registration	47	17	30	10	6	2	11	20	3	2	1	1,49
Share in Export Duty on Jute	.	.	1,25	.	.	10	.	11	1	.	.	1,47
Share in Taxes on Income other than Corporation Tax	173	2,42	2,80	1,82	61	50	97	1,83	28	25	12	12,26
Total Revenue Receipts*	21,33	17,69	16,01	20,27	640	3,64	16,40	697	212	1,52	2,07	114,42

The Total Revenue Receipts include several other minor heads of Revenue not mentioned above  
This includes receipts under Irrigation

## PROVINCIAL EXPENDITURE

(In Lakhs of Rupees)

Budget Estimates, 1943-44

Main Heads of Expenditure	Madras	Bombay	Bengal	U.P.	C.P.	Assam	Punjab	Bihar	Orissa	Sindh	N.W.F.P.	Total of Heads of Expenditure
General Administration	96	1,01	1,64	1,57	72	40	1,25	64	33	27	22	9,02
Administration of Justice	1,01	71	21	77	26	11	58	89	7	13	9	4,13
Jails & Convict Settlements	88	2	57	56	14	6	42	29	4	15	12	298
Police	2,01	220	2,89	2,92	84	24	212	96	26	63	48	15,50
Education	8,76	218	1,87	2,87	57	46	1,77	81	28	36	27	13,99
Medical	1,12	67	56	51	18	16	54	26	11	11	9	4,80
Public Health	24	68	40	27	6	9	21	14	3	4	2	2,03
Agriculture	86	80	52	56	12	15	52	14	3	13	3	2,86
Industries	1,00	16	18	147	4	2	28	26	10	2	2	3,65
Co-operation	16	11	17	8	2	2	26	11	3	1	2	1,01
Civil Works	1,30	1,67	1,18	90	54	47	1,58	47	21	28	27	8,87
Direct Demand on Revenue	2,07	2,34	1,17	1,71	1,08	44	1,14	41	18	39	20	11,11
Total Expenditure on Revenue Account	21,92	17,68	17,55	20,18	6,38	8,72	14,69	6,36	2,16	5,09	214	117,13

This represents expenditure on department's connected with collection of Revenues  
 Besides the main heads of expenditure mentioned here, this includes minor heads of expenditure



accumulated deficit is Rs. 1,72,99,000. The Government of India, on the other hand, had about 6 years of deficit and 9 years of surplus.

### 5. Finance under the New Constitution.

The financial organisation was reviewed as part of the work of the Round Table Conference. The Peel Committee and the Percy Committee examined the whole question. Detailed investigations were however carried out by Sir Otto Niemeyer whose report was published in April, 1936. These recommendations were embodied in the Government of India (Distribution of Revenues) Order 1936. It provides financial assistance from the beginning of Provincial Autonomy to certain provinces partly in the form of cash subventions and partly in assigning certain percentage of central revenue to the provinces. The cash subventions are as follows. These will be charged on the revenues of the Federation as grants-in-aid of the revenues of the provinces

1. The United Provinces 25 lakhs of rupees in each year of the five years from the commencement of Part III of the Act

2. Assam, 30 lakhs of rupees in each year

3. The North-West Frontier Province 100 lakhs of rupees in each year

4. Orissa In the first year after the commencement of Part III of the Act, 47 lakhs of rupees in each of the next four succeeding years, 43 lakhs of rupees and in every subsequent year, 40 lakhs of rupees.

5. Sind In the first year after the commencement of Part III of the Act, 110 lakhs of rupees in each of the next nine years, 105 lakhs of rupees, in each of the next twenty years, 80 lakhs of rupees, in each of the next five years, 65 lakhs of rupees, in each

of the next five years, 60 lakhs of rupees, and in each of the next five year, 55 lakhs of rupees

The assigning of certain percentage of central revenues to the provinces will be regulated by the following provision of the order in council

The percentage which under subsection (1) of section one hundred and thirty-eight of the Act pertaining to proceeds from taxes on income is to be prescribed by His Majesty in Council shall be fifty per cent, and the sums falling to be distributed under that subsection in any year among the provinces shall be distributed as follows —

	Per cent
Madras	15.
Bombay	20
Bengal	20
The United Provinces	15
The Punjab	8
Bihar	10
The Central Provinces & Berar	5
Assam.	2
The North-West Frontier Province	1
Orissa	2
Sind	2

(Some of this amount may be retained under Section 138 (2) of the Government of India Act, 1935).

In addition to these subventions the proportion of the net proceeds in each year of any export duty on jute or jute products which under subsection (2) of section one hundred and forty of the Act is to be assigned to the Provinces or Federated States in which jute is grown shall be sixty-two and one-half per cent

## CHAPTER XXII

### DEVELOPMENT OF LOCAL SELF-GOVERNMENT IN INDIA

*"A nation may establish a free government, but without the spirit of municipal institutions it cannot have the spirit of liberty"—Tacquerville*

#### 1. Early Local Self-Government.

In the field of the provincial government, local self-government is at once the most outstanding department. The institution of local self-government is not new to Indian mind. "In common with other offshoot of Aryan race, the Hindus had a form of free local self-government long before they had a centralised state." Every village in ancient India was an autonomous political unit. It was of such villages that Sir Henry Maine speaks in his village communities, "which endured in split wars and changes of dynasties, in spite of every revolution in the principles of government."

The earliest step in municipal government were in the three presidencies. A corporation composed of Europeans and Indians was established in Madras as early as 1687 for purposes of local taxation. Later Bombay and Calcutta followed the lead. The charter Act of 1793 empowered the Governor-General to appoint justices of the peace for the presidency towns to meet the cost of scavenging, police and maintenance of roads. A series of legislative enactments was passed between the years 1842 and 1862 providing for the setting up of municipal institutions in other towns. The acts provided the appointment of commissioners to manage municipal affairs and authorised them to

levy various taxes, but in most provinces the commissioners were nominated

## 2. Later Developments.

Later local self-government was extended to the rural areas by an Act of 1865 which authorised the imposition of cess on land and a tax on houses for local purposes. Considerable progress was however made during Lord Mayo's Viceroyalty. Municipal activities were extended and elective principle was introduced.

During the Viceroyalty of Lord Ripon, Acts were passed (1883-84) that greatly altered the constitution, powers, and functions of municipal bodies. A wide extension was given to the elective system, while independence and responsibility were conferred on the committees of many towns by permitting them to elect a private citizen as chairman. Scope was also given to increase municipal resources, and financial responsibility was conferred by transferring some items of provincial revenues to its management. The same general principles are still adhered to this day.

The result was a very considerable increase in the number of municipal bodies in urban areas with well-marked field of activity. In rural areas, however, despite the general principle laid down, much success was not achieved.

The Decentralisation Commission of 1909 suggested further improvements but the principles of 1882 continued to regulate development until 1913. Mostly, the chairmen were district officers and local self-government was only one of their many activities. Even in many towns, the municipality continued to confine its activities to approving the decision of official chairman, and where duties were entrusted to

the vice-chairman, he merely usually followed the instructions of the official

The chief recommendation of the Decentralisation Commission in respect of the institution of local self government was the revival of the village council-tribunal or panchayats, "while, therefore, we desire the development of a panchayat system, and consider that the objections urged there to are far from insurmountable we recognise that such system can only be gradually and tentatively applied, and that it is impossible to suggest any uniform and definite method of procedure. We think that a commencement should be made by giving certain limited powers to panchayats in those villages in which circumstances are most favourable by reason of homogeneity, natural intelligence, and freedom from internal feuds. These powers must be increased gradually as results warrant and with success here, it will become easier to apply the system in other villages. Such a policy which must be the work of many years, will require great care and discretion, much patience and judicial discrimination between the circumstances of different villages, and there is considerable consensus of opinion that this new departure should be made under the special guidance of sympathetic officers." In response to this various provincial acts were passed and the system is being gradually revived

### 3. Local Self-Government after 1919.

After the introduction of Montague-Chelmsford Reforms in 1920, the department of Local Self-Government was transferred to the hands of ministers responsible to the legislature. In almost all the provinces the councils used their new powers to make local bodies a more effective training ground for larger and wider political responsibilities. The

general trend in the case of most provinces was the same. Almost all aimed at lowering the franchise and at increasing the elected element in local bodies so that almost every local body has now an elected majority and a non-official chairman. In other words the new changes made these institutions more real and active.

#### 4. Municipalities.

The general scheme of local self-Government organisation in India may be divided into two categories, urban and rural. The urban boards are called municipalities. There are some 781 municipalities in India with over 210 lakhs of people residing within their limits. Of these municipalities, about 710 have got a population of less than 50,000 each and the remaining have got a population of 50,000 or over. More than 20 per cent of the population of Bombay live within municipalities, while only 3 per cent is the quota for Assam.

The big municipalities of Calcutta, Bombay and Madras constituted by special acts are commonly known as corporations. Others are known as municipalities. Calcutta and Bombay have also established improvement trusts with a view to making provision for the improvement and expansion of the cities by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation, or recreation, demolishing or constructing buildings and rehousing the poorer working classes displaced by the execution of improvement schemes. The scheme of improvement trusts has also been extended in other provinces. Improvement Trusts have thus been constituted in Lucknow, Allahabad and Cawnpore in the United Provinces.

The municipal government is vested in a body

of commissioners or councillors. The councillors of the corporation vary in number from 106 in Bombay to 61 in Madras, mostly elected on a fairly wide franchise, varying from 10% in Bombay to 5% in Madras. In the case of other municipalities about 14% of urban population enjoys municipal franchise. In every town the majority of the councillors are elected, varying from four-fifths of the total membership in Bihar and Orissa to two-thirds in Bengal. The nominated members usually represent minorities, special interest and men of special abilities. All questions are decided by majority of votes at a meeting. The government reserve the right of suspension of a municipality in case of gross mismanagement, abuse of power, or neglect of duty. The provincial governments exercise their power through District Officers and Divisional Commissioners to whom all the proceedings are supplied by the Boards.

### 5. District Boards.

The duties and functions assigned to the municipalities in urban areas are entrusted to district and local boards in rural areas. In almost every district of British India except in Assam, there are district boards and sub-district boards.

Throughout India there are some 207 district boards with 584 sub-district boards and more than 800 union committees. The machinery has jurisdiction over a population of  $21\frac{1}{4}$  crores. The majority of the members are elected on a franchise which now gives the vote to a little more than 3.2 per cent of the population. Communal electorate for Muhammedans are provided in the Bombay Presidency and the United Provinces for district boards and in Assam for local boards. Minorities and special interests are represented by nomination.

Almost everywhere in the district boards the chairman is elected. Their constitution is much the same as that of the municipalities. Besides, there are other minor units of village government. The panchayats look after such matters like sanitation and wells in the villages. Mostly, members are elected. In Madras, Bombay and Assam all the adult males have a right of vote for this election.

## 6 Functions of Local Bodies.

The main functions of these local bodies are —

(a) Public Safety This includes the construction, upkeep, cleansing, watering, naming and lighting of streets and roads the protection from fire and from dangerous buildings, the regulation of public nuisances and dangerous trades.

(b) Conservation of public health. The preservation of the public health—principally with reference to the reclamation of unhealthy areas, prevention of epidemic diseases, vaccination, sanitation, drainage and the provision of medical relief through hospitals, dispensaries, supply of midwives, etc., the construction of tanks, washing places, bathing places, parks, etc, comprise an important function of municipalities.

(c) Commercial undertakings Water supply, gas, and electric supply, the construction and maintenance of bazars, crematoriums, tramways and bus services, etc., are financed and managed by the corporations.

(d) Imparting of education, maintenance of middle or secondary schools, colleges, libraries, museums, social service exhibitions and particularly propagation of primary education, comprise the important function of municipalities. Municipalities make lump



grants to schools within their jurisdiction. In some, particularly as regards primary education, they start and maintain free primary schools. The Calcutta Corporation maintains more than 100 free schools

## 7. Finance of the Municipal and Local Boards.

Municipalities are allowed a wide choice in the form of the taxes which they may levy. Octroi duties, terminal taxes, taxes on circumstances and property, professions and vehicles, have all been utilised, while for particular services, such as education and water supply, special taxes or cesses are imposed. The total municipal income is 14.03 crores out of which only the four cities of Calcutta, Bombay, Madras, and Rangoon together account for 40%.

The Government's control in financial matters is limited generally to cases in which the interest of the general public call for special protection. The Government has the right to alter a municipal budget, if it considers that due provision has not been made for loan charges and for the maintenance of a working balance, and it may intervene in the administration of a council by way of preventing or initiating action in matters affecting human life, health, safety or public tranquillity. But these powers have been rather infrequently exercised.

The main source of rural authorities is a tax or cess levied on the annual value of land and collected with the land revenue, though this may be supplemented by taxes on companies and professional men and by tolls on vehicles. A very large proportion of the revenue of these authorities, however, consists of subventions from the various Provincial Governments. These are given not only as grant-in-aid for particular services, but not in-

frequently in the form of capital sums for the provision of works of constructions

It is said that the financial resources are quite inadequate to meet the needs of these local bodies. The grant given by the Local Governments does not make up deficit. In Bombay the Government grants amounted to nearly 60% of the revenue of district Boards. The most disturbing feature is however the failure to collect taxes imposed by the local bodies. In the municipalities since the Reforms uncollected arrears have been mounting up to very large sums. This feature is referred to by almost every provincial government in reviewing the work of their local bodies and it is a great laxity in this respect". Steps are however being taken to remedy this defect.

### **8 Local self Government under the new Constitution.**

Under the new constitution the position of the Local self-Government remains the same. It remains a provincial subject under the control of a minister responsible to the legislature. List, 2 of the 7th schedule to the Government of India Act, 1935 provides that "Local Government, that is to say, the constitution and powers of the municipal corporation, improvement trust, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration, together with "Public health and sanitation, hospitals and dispensaries, registration of births and deaths will form part of Provincial list.

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## PART IV

# POLITICAL

### CHAPTER XXIII

## POLITICAL DEVELOPMENTS

*.. 'People listen to Nehru, Nehru listens to Gandhi, and Gandhi listens only to God'*

—Lin Yutang

### 1. Working of Constitution.

The Provincial part of Government of India Act 1935 came into force on April 1, 1937. But the formation of Ministries in the Provinces of U P., Bihar, Bombay, Madras, C P and Orissa were delayed as the Congress party which was in majority in these Provinces asked for an assurance from the Governors that they would not interfere in the day to day activities of the ministry.

For the first 6 months therefore there was a constitutional deadlock and the Governors were compelled to carry on the administration with the help of Ministers who did not command a majority in the legislature. The formation of such "interim ministries" at the very beginning of the constitution was widely ridiculed.

In July 1937, the situation was changed by the assuring speeches of the Secretary of State for India and the Governor-General, and the Congress decided to form ministries in the six provinces of Bombay, Madras, United Provinces, Central Provinces and Bihar, Bihar and Orissa where they had clear majori-

ties. Sometime later, the Congress in coalition, with other parties was able to form ministries in the North-West Frontier Province and Assam also

### Governors as Constitutional Heads.

After the initial difficulty described above was got over, the working of the provincial constitution was, everywhere, smooth beyond all expectations. The assurances controversy had clarified the issues and the Governors acted tactfully and allowed the Ministers full scope for putting into operation their own programmes. There were incidents in the life of the United Provinces, Bihar, Orissa and Central Provinces Ministries which raised first class constitutional issues, but the manner in which they were tided over bore testimony to the spirit of good-will prevailing on both sides

### 2. War and Resignation of Congress Ministries.

The beginning of the year 1939 saw the worsening of the political situation in Europe. In the meantime, the possibility of India being involved in war drew the attention of the British Government to an omission in the Act of 1935 by which though provision had been made for the Central Legislature to make laws on provincial subjects in case of an emergency, no authority had been given to the officers of the Central Government to undertake the execution of such matters. This was corrected by the Amendment of the Government of India Act, which laid down that if the Governor-General issued a Proclamation of emergency and declared that the security of India was threatened by war, the Central Legislature could confer powers or impose duties upon the officers of the Government of India even as respects Provincial matters. Further, it authorized the Governor-General;

during the operation of such emergency, to give directions to a Province as to the manner in which its executive authority was to be exercised. Thus, by a single stroke, the Government of India was given full powers to control all activities of the Provincial Executive and Legislature, if it so chose.

This was followed by the Governor-General enacting the Defence of India Act, 1939, by which the Proclamation of Emergency was issued, and the Central Government assumed the powers to make such rules as appeared to it to be necessary, or expedient for securing "the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war or for maintaining supplies and services essential to the life of the community". In exercise of these wide powers, various rules of far-reaching importance have been issued from time to time.

The Indian National Congress asked for a clear statement from the British Government that at the end of the War, India would be given the right to frame her own constitution (through a Constituent Assembly) which *may* amount to complete independence. The British Government, while giving a general assurance, dwelt on the complexity of the Indian problem and the Secretary of State for India referred in particular to the lack of unity among the different communities in India and the consequent inability of the British to divest themselves of their responsibility for the welfare and good government of the people of India.

The Congress Ministries in the eight provinces thereupon resigned offices by November, 1939, thus leaving only Bengal, Sind and the Punjab governments to function. The Governor of Assam was able to form an alternative Ministry but the Governors of

the remaining seven provinces were compelled to declare the failure of Constitutional machinery and take over the entire control of administration in their own hands, as authorised by Section 93 of the Government of India Act, 1935. The legislatures were suspended, the Governors assuming to themselves all the legislative powers. A few senior Government Officials were appointed in each province to act as Advisers to the Governor to assist him in carrying on the government.

Due to differences among the members of the Congress party in the Orissa Legislative Assembly, the Governor there found it possible to appoint an alternative ministry and therefore withdrew Section 93 and restored the normal working of the Provincial Constitution, since the autumn of 1941. Later, a coalition ministry was also formed in the N W F P. and Section 93 accordingly withdrawn. On the other hand, the ministries in Bengal and Sind have had a chequered career.

### 3 Viceroys declaration of August 1940.

The suspension of the Constitution in the majority of the provinces, the continuance of an irresponsible government at the Centre and the approaching danger of war to India's frontiers led to grave political discontent in the country. The major political parties concentrated their attention on the demand for the introduction of a National Government at the Centre, pending the final solution of India's constitutional problems to be achieved after the war. In August, 1940, an important declaration was made by the Viceroy, which was later confirmed by the Secretary of State for India. The goal of British policy in India was declared to be the establishment of Dominion Status in India as soon after the war as possible.

The responsibility for framing the new constitution was, in accordance with the principle of self-determination, declared to rest primarily on the people of India, "subject to due fulfilment of obligations with Great Britain's long connection with India has imposed on her and for which His Majesty's Government cannot divest themselves of responsibility." This declaration was coupled with the offer of the expansion of the Governor-General's Executive Council so as to make it representative of India's national interests. "That pronouncement evoked little enthusiasm in India for the following main reasons —

The failure to end the political stalemate led to the revival of extremism in Indian politics. The British Government, having tried its hand at settlement and failed, declared its inability to do anything further and laid the blame at the door of communal differences in India. The Indian National Congress stressed its faith in complete independence and, as a protest against the restriction of freedom of expression during the war, started a movement of Individual Civil Disobedience. The Muslim League advocated the partition of India so that the areas in which the Muslims were in a numerical majority should be grouped together to form what is known as Pakistan. This idea was bitterly resented by all liberal elements as it would strike against the essential unity and integrity of the country.

In July 1941, the British Government, finding it impossible to induce the different communities in India to come to an agreement, announced the expansion of the Governor-General's Executive Council by the appointment of Indians to the five new portfolios created to meet the increased pressure of work due to the war. The number of Members in the Council,

including the Commander-in-Chief was thus raised to twelve out of whom seven were Indians.

#### 4. India and Atlantic Charter.

Public resentment was soon aroused by the interpretation of the Atlantic Charter by Mr. Churchill, the British Prime Minister. The Atlantic Charter was a document purporting to be a joint declaration of war aims by the British Prime Minister and the President of the U.S.A. One of the Articles of the Charter reads as follows: "They respect the rights of all peoples to choose the form of government under which they will live, and they wish to see sovereign rights and self-government restored to those who have been forcibly deprived of them." To the question whether the Charter was applicable to India, the British Prime Minister replied "No, Sir." In spite of the later explanations on the part of the British authorities, the disappointment caused in India was real and widespread.

#### 5. The Cripps offer

The entry of Japan into the war in November 1941 constituted a menace to India's eastern frontiers and stressed the need for an increased war effort in India. The British War Cabinet therefore agreed to reconsider the whole question of constitutional settlement in India. The conclusions of the Cabinet were embodied in a document which was handed over to a member of the Cabinet, Sir Stafford Cripps, a renowned socialist and an acknowledged friend of India's political aspirations. Sir Stafford arrived in India in March 1942 and revealed the proposals of the War Cabinet to a few high officials and leaders of different parties. The proposals were later published. The following is the full text.

His Majesty's Government, having considered, the



anxieties expressed in this country and in India as to the fulfilment of promises made in regard to the future of India, have decided to lay down in precise and clear terms the steps which they propose shall be taken for the earliest possible realisation of self-government in India. The object is the creation of a new Indian Union which shall constitute a Dominion associate with the United Kingdom and other Dominions by a common allegiance to the Crown but equal to them in every respect, in no way subordinate in any aspect of its domestic and external affairs.

His Majesty's Government, therefore, make the following declaration

(a) Immediately upon the cessation of hostilities steps shall be taken to set up in India, in the manner described hereafter, an elected body charged with the task of framing a new constitution for India

(b) Provision shall be made, as set out below, for the participation of Indian States in the constitution-making body

(c) His Majesty's Government undertakes to accept and implement forthwith the constitution so framed subject only to —

(i) The right of any province of British India that is not prepared to accept the new constitution to retain its present constitutional position, provision being made for the subsequent accession if it so decides

With such non-acceding provinces, should they so desire, His Majesty's Government will be prepared to agree upon a new constitution giving them the same full status as the Indian Union and arrived at by a procedure analogous to that here laid down.

(ii) The signing of a treaty which shall be negotiated between His Majesty's Government and the constitution-making body. This treaty will cover all necessary matters arising out of the complete transfer

of responsibility from British to India hands, it will make provision, in accordance with the undertakings given by His Majesty's Government for the protection of racial and religious minorities but will not impose any restriction on the power of the Indian Union to decide in future its relationship to other member States of the British Commonwealth.

Whether or not an Indian State elects to adhere to the constitution it will be necessary to negotiate a revision of its treaty arrangements so far as this may be required in the new situation.

(d) The constitution-making body shall be composed as follows, unless the leaders of Indian opinion in the principal communities agree upon some other form before the end of hostilities

Immediately upon the result being known of provincial elections which will be necessary at the end of hostilities, the entire membership of the Lower Houses of provincial legislatures shall as a single electoral college proceed to the election of the constitution-making body by the system of proportional representation. This new body shall be in number about 1/10th of the number of the electoral college.

Indian States shall be invited to appoint representatives in the same proportion to their total population as in the case of representatives of British India as a whole and with the same powers as British Indian members

(e) During the critical period which now faces India and until the new constitution can be framed, His Majesty's Government must inevitably bear the responsibility for, and retain the control and direction of, the defence of India as part of their world war effort, but the task of organising to the full the military, moral and material resources of India must be the responsibility of the Government of India with the co-operā-

tion of the people of India. His Majesty's government desire and invite the immediate and effective participation of the leaders of the Principal sections of the Indian people in the councils of their country, of the Commonwealth and of the United Nations. Thus they will be enabled to give their active and constructive help in the discharge of a task which is vital and essential for the future freedom of India."

After a fortnight's discussion Sir Stafford Cripps' negotiations with the party leaders broke down. All parties rejected the British proposals for post-war constitution-making, but for different reasons. The Congress' main objection was that under the 'non-adherence' clauses Pakistan was a possibility, the League's that it was only a possibility and not a certainty. But the breakdown of the negotiations was not due to disagreement as to the post-war constitution, on which it was generally accepted that discussion might be postponed, but to disagreement as to the character of the National Government which it had been hoped might be formed at once. The Congress leaders insisted that, while the British Commander-in-Chief would be left in control of military operations, in all other respects the Government must be 'a Cabinet Government with full power.' Sir Stafford Cripps rejected this demand because (a) it would involve a major constitutional change in the middle of the war—and he had explicitly ruled this out from the outset of the discussions—and (b) it would involve a majority dictatorship to which none of the minorities would consent.

### 6. The 1942 Struggle

"The rejection of the Cripps Proposals was followed by a rapid deterioration of the political situation in the country. The radical elements in India felt a

sense of indignation that even at such a critical period in her history Great Britain could not part with the substance of power. On the other hand, the British Government felt satisfied that they had done their very best and could go no further. In order, however, to conciliate moderate opinion, a further expansion of the Governor-General's Council, admitting more non-official Indians, was announced in July 1942. India also sent two representatives to attend some meetings of the War Cabinet in Great Britain and to represent India on the Pacific War Council. The Indian National Congress, saw things with discontent, passed a Resolution at a meeting of its All-India Congress Committee held in August, 1942, threatening to start civil disobedience on a mass scale. This led to prompt action on the part of the Government who ordered wholesale arrests of the Congress leaders. A movement of widespread sabotage, and violence thereupon ensued, and though after several months it was brought under control, it only led to increase of bitterness and suspicion, thereby postponing the prospect of any early settlement of the constitutional problem."

### 7. The Simla Conference

The tense political atmosphere in the country was partly cooled by the release of Mahatma Gandhi in the middle of 1944 and of the Members of the Congress Working Committee in June 1945. The Viceroy, on behalf of the British Government made the following announcement.

"I have been authorised by His Majesty's Government to place before Indian political leaders' proposals designed to ease the present political situation and to advance India towards her goal of full self-government," said His Excellency, the Viceroy, in a broad-

cast in June 1945 on His Majesty's Government's future policy for India. "These proposals are at the present moment being explained to Parliament by the Secretary of State for India. My intention in this broadcast is to explain to you the proposals, the ideas underlying them, and the method by which I hope to put them into effect.

"This is not an attempt to obtain or impose a constitutional settlement. His Majesty's Government had hoped that the leaders of the Indian parties would agree amongst themselves on a settlement of the communal issue, which is the main stumbling-block, but this hope has not been fulfilled

"In the meantime, India has great opportunities to be taken and great problems to be solved which require a common effort by the leading men of all parties. I therefore propose, with the full support of His Majesty's Government to invite Indian leaders, both of Central and provincial politics, to take counsel with me with a view to the formation of a new Executive Council more representative of organized political opinion. The proposed new Council would represent the main communities and would include equal proportions of caste Hindus and Muslims. It would work, if formed, under the existing constitution but it would be an entirely Indian Council except for the Viceroy and the Commander-in-Chief who would retain his position as War Member.

"It is also proposed that the portfolio of External Affairs, which has hitherto been held by the Viceroy should be placed in charge of an Indian Member of Council, so far as the interests of British India are concerned

"A further step proposed by His Majesty's Government is the appointment of a British High Commissioner in India, as in the Dominions, to represent

Great Britain's commercial and other such interests in India.

"Such a new Executive Council will you realize, represent a definite advance on the road to self-government. It will be almost entirely Indian, and the Finance and Home Members will for the first time be Indians, while an Indian will also be charged with the management of India's foreign affairs. More over members will now be selected by the Governor-General after consultation with Political leaders though their appointment will of course be subject to the approval of His Majesty, the King Emperor.

The council will work within the frame work of the present constitution and there can be no question of the Governor General agreeing not to exercise his constitutional power of control but it will of course not be exercised unreasonably.

"I should like to make it clear that the formation of this interim Government will in no way prejudice the final constitutional settlement.

"The main tasks for this new Executive Council would be —

"First to prosecute the war against Japan with the utmost energy till Japan is utterly defeated

"Secondly, to carry on the government of British India with all the manifold tasks of post-war development in front of it, until a new permanent constitution can be agreed upon and come into force.

"Thirdly, to consider, when the members of the Government think it possible, the means by which such agreement can be achieved.

"The third task is most important. I want to make it quite clear that neither I nor His Majesty's Government have lost sight of the need for a long-term solution, and that the present proposals are intended to make a long-term solution easier.

"I have considered the best means of forming such a Council, and have decided to invite the following to Viceregal Lodge to advise me. Those now holding office as Premier in a provincial Government, or, for provinces now under Section 93 Government those who last held the office of Premier, the leader of the Congress Party and the deputy leader of the Muslim League in the Central Assembly the leader of the Congress Party and the Muslim League in the Council of State also the leaders of the Nationalist Party and the European Group in the Assembly Mr. Gandhi and Mr. Jinnah as the recognized leaders of the two main political parties Rao Bahadur N. Siva Raj to represent the Scheduled Classes Master Tara Singh to represent the Sikhs

"Invitations to these gentlemen are being handed to them today and it is proposed to assemble the conference on June 25 at Simla where we shall be cooler than at Delhi

"I trust that all those invited will attend the conference and give me their help. On me and on them will lie a heavy responsibility in this fresh attempt to make progress towards a final settlement of India's future.

"If the meeting is successful, I hope that we shall be able to agree on the formation of the new Executive Council at the Centre. I also hope that it will be possible for Ministries to reassume office and again undertake the tasks of government in the provinces now administered under Section 93 of the Constitution Act and that these Ministries will be coalitions.

"If the meeting should unfortunately fail, we must carry on as at present until the parties are ready to come together. The existing Executive Council, which has done such valuable work for India, will continue it if other arrangements cannot be agreed.

"But I have every hope that the meeting will succeed, if the party leaders will approach the problem with the sincere intention of working with me and with each other.

"I can assure them that there is behind this proposal a most genuine desire on the part of all responsible leaders in the United Kingdom and of the British people as a whole to help India towards her goal. I believe that this is more than a step towards that goal. It is a considerable stride forward, and a stride on the right path.

"I should make it clear that these proposals affect British India only and do not make any alteration in the relations of the Princes with the Crown Representative.

"With the approval of His Majesty's Government, and after consultation with my Council, orders have been given for the immediate release of the members of the Working Committee of Congress who are still in detention. I propose to leave the final decision about the others still under detention as the result of the 1942 disturbances to the new Central Government, if formed, and to the provincial Governments.

"The appropriate time for fresh elections for the Central and provincial legislatures will be discussed at the conference.

"Finally, I would ask you all to help in creating the atmosphere of goodwill and mutual confidence that is essential if we are to make progress. The destiny of this great country and of the many millions who live in it depend on the wisdom and good understanding of the leaders, both of action and of thought, British and Indian, at this critical moment of India's history.

"India's military reputation never stood higher in the world than it does at present, thanks to the ex-



plots of her sons drawn from all parts of the country. Her representatives at international conferences have won high regard for their statesmanlike attitude. Sympathy for India's aspirations and progress towards prosperity was never greater or more widespread. We have thus great assets if we can use them wisely. But it will not be easy, it will not be quick, there is very much to do, there are many pitfalls and dangers. There is on all sides something to forgive and forget.

"I believe in the future of India, and as far as in me lies will further her greatness. I ask you all for your co-operation and goodwill."

The Congress President, Maulana Abul Kalam Azad was later also invited.

## CHAPTER XXIV.

### NEW DECLARATION OF INDIA POLICY (LABOUR GOVERNMENT.)

*"Success is sweet, the sweeter if long delayed—and attained through manifold struggles and defeats"*

#### 1. The Labour Government and declaration of India policy.

Soon after the conclusion of the Simla Conference, the results of elections to the British House of Commons, which were held early in July 1945, were announced. The (predominantly conservative) coalition Government headed by Mr. Churchill was badly defeated at polls. The Labour party was returned in a huge majority, and Mr. Attlee formed the Labour Government in the last week of July 1945.

Soon after the Viceroy was again called to London and as a result of discussions with him, the Prime

Minister Mr. Attlee on September 19, 1945 broadcast a declaration of policy towards India.

The Prime Minister said "The King's speech at the opening of the new Parliament contained this passage, 'in accordance with the promises already made to my Indian peoples, my Government will do their utmost to promote in conjunction with leaders of Indian opinion early realization of self-government in India'."

"Immediately after assuming office the government turned their attention to Indian affairs and invited the Viceroy to come home in order to review with him the whole situation, economic and political. These discussions have now concluded and the Viceroy has returned to India and has made an announcement of policy.

"You will remember that in 1942 the Coalition Government made a draft declaration for discussion with Indian leaders commonly known as the Cripps Offer.

"It was proposed that immediately upon the cessation of hostilities steps should be taken to set up in India an elected body charged with the task of framing a new constitution for India. Sir Stafford Cripps took that offer to India, but it was unfortunately not accepted by the leaders of Indian political parties the Government are, however, acting in accordance with its spirit and intention.

"The first step necessary is to get, as soon as may be as democratic a representation of the Indian peoples as possible. War has in India, as in this country, prevented elections being held for a long time, and the Central and provincial legislatures must now be renewed. Therefore, as has already been announced, elections will be held in India in the coming cold weather. Electoral rolls are being revised as com-

pletely as time permits and everything possible will be done to ensure a free and fair election.

"The Viceroy has today made known our intention to follow the election by positive steps to set up a constituent assembly of Indian elected representatives, charged with the task of framing a new constitution. Government have authorized Lord Wavell to undertake preliminary discussions with representatives of the new provincial legislatures, as soon as they are elected to ascertain whether the proposals of the Cripps offer are acceptable as they stand, or whether some alternative or modified scheme should be preferable. Discussions will also take place with the representatives of Indian States

"Government have further authorized the Viceroy, as an interim measure, to take steps after the elections to bring into being an Executive Council, having the support of the main Indian parties, in order that India may deal herself with her own social and economic problems and may take her full part in the working out of a new world order

"The broad definition of British policy towards India, contained in the declaration of 1942, which had the support of all parties in this country, stands in all its fullness and purpose. This declaration envisaged negotiation of a treaty between the British Government and the constitution-making body. Government are giving immediate consideration to the contents of such a treaty,

"It can be said here that in that treaty we shall not seek to provide for anything incompatible with the interests of India. No one who has any acquaintance with Indian affairs will under-estimate the difficulties which will have to be surmounted in the setting up and smooth operation of a constitution-making body. Still greater is the difficulty which

will face the elected representatives of the Indian people in seeking to frame a constitution for a great continent containing more than 400,000,000 human beings.

"During the war Indian fighting men have in Europe, Africa and Asia played a splendid part in defeating the forces of tyranny and aggression. India has shared to the full with the rest of the United Nations the task of saving freedom and democracy. Victory came through unity and through the readiness of all to sink their differences in order to attain the supreme object, victory.

"I would ask all Indians to follow this great example and to join together in a united effort to work out a constitution which the majority and minority communities will accept as a just and fair constitution, in which both the States and the provinces can find their place. The British Government will do their utmost to give every assistance in their power, and India can be assured of the sympathy of the British people."—Reuter.

## 2. Viceroy's announcement.

The announcement of policy by the Viceroy referred in the Prime Minister's declaration was made by Lord Wavell on the same date. It reads as follows —

"After my recent discussions with His Majesty's Government in London they authorized me to make the following announcement:

"As stated in the gracious Speech from the Throne at the opening of Parliament, His Majesty's Government are determined to do their utmost to promote, in conjunction with the leaders of Indian opinion, the early realization of full self-government

in India. During my visit to London they have discussed with me the steps to be taken.

"An announcement has already been made that elections to the Central and provincial legislatures, so long postponed owing to the war, are to be held during the coming cold weather. Thereafter His Majesty's Government earnestly hope that ministerial responsibility will be accepted by political leaders in all provinces.

"It is the intention of His Majesty's Government to convene as soon as possible a constitution-making body, and as a preliminary step they have authorized me to undertake, immediately after the elections, discussions with representatives of the Legislative Assemblies in the provinces, to ascertain whether the proposals contained in the 1942 declaration are acceptable or whether some alternative or modified scheme is preferable. Discussions will also be undertaken with the representatives of the Indian States with a view to ascertaining in what way they can best take their part in the constitution-making body.

"His Majesty's Government are proceeding to the consideration of the content of the treaty which will require to be concluded between Great Britain and India.

"During these preparatory stages, the government of India must be carried on, and urgent economic and social problems must be dealt with. Furthermore, India has to play her full part in working out the new world order. His Majesty's Government have therefore further authorized me, as soon as the results of the provincial elections are published, to take steps to bring into being an Executive Council which will have the support of the main Indian parties."

That is the end of the announcement which His Majesty's Government have authorized me to make.

It means a great deal. It means that His Majesty's Government are determined to go ahead with the task of bringing India to self-government at the earliest possible date. They have, as you can well imagine, a great number of most important and urgent problems on their hands but despite all their preoccupations they have taken time, almost in their first days of office, to give attention to the Indian problem, as one of the first and most important. That fact is a measure of the earnest resolve of His Majesty's Government to help India to achieve early self-government.

The task of making and implementing a new constitution for India is a complex and difficult one, which will require goodwill, co-operation and patience on the part of all concerned. We must first hold elections so that the will of the Indian electorate may be known. It is not possible to undertake any major alteration of the franchise system. This would delay matters for at least two years. But we are doing our best to revise the existing electoral rolls efficiently.

After the elections, I propose to hold discussions with representatives of those elected, and of the Indian States to determine the form which the constitution-making body should take, its powers and procedure. The draft declaration of 1942 proposed a method of setting up a constitution-making body but His Majesty's Government recognize that, in view of the great issues involved and the delicacy of the minority problems, consultation with the people's representatives is necessary before the form of the constitution-making body is finally determined.

The above procedure seems to His Majesty's Government and myself the best way open to us to give India the opportunity of deciding her destiny. We are well aware of the difficulties to be overcome but are determined to overcome them. I can certain-

ly assure you that the Government and all sections of the British people are anxious to help India, which has given us so much help in winning this war. I for my part will do my best, in the service of the people of India, to help them to arrive at their goal, and I firmly believe that it can be done.

It is now for Indians to show that they have the wisdom, faith and courage to determine in what way they can best reconcile their differences and how their country can be governed by Indians for Indians.

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## CHAPTER XXV

### INDIA'S PARTITION SCHEMES

*"The so-called communal problem in India is jugglery. It is most studied but least understood in its right perspective, and consequently abortive in its solution. The existing knowledge of its causes and cure is not only confused and illtold but is substantially far from truth and reality. The next step in the national reconstruction is therefore a correct lead in this direction to achieve national solidarity and to avoid any future repetition of our national disaster."*

This book is essentially descriptive in nature. No criticisms have, therefore, been attempted or suggestion offered regarding the complicated communal problem in India. The following paragraphs only summarise or, where necessary, textually reproduce the various schemes proposed for the partition of the country.

#### 1. The Coupland Scheme

The failure of Coupland's proposals was followed by a learned treatise on the Constitutional Problem of

India' by Prof. Coupland. While it is not an official scheme, the amount of publicity given to it makes one feel sure that it is not a mere academic study. In many respects it is less liberal than the Cripps proposals and is calculated to strengthen the British hold on India

The heart of scheme is *Regionalism*. The object is to satisfy the Muslims and yet maintain the unity of India. According to the author himself, it is a *via media* between Partition on the one hand and an All-India Federation on the other. The divisions are to be along the main river basins of the country, the argument being that "the natural physical division of India is the river basins". India is to be divided into four Regions, (1) The India Region (roughly corresponding with the North-Western zone of the Muslim League). It is to include the present Provinces of Sind, the North-West Frontier, and the Punjab minus the Ambala division where Non-Muslims predominate, as well as Baluchistan, Kashmir, and a good portion of Rajputana. (2) The Ganges Region, comprising mainly the United Provinces, Bihar, portions of Central India and Orissa. (3) The Delta Region (roughly corresponding with the North-Eastern zone of the Muslim League). It is to include Assam and Bengal minus the Burdwan division where the Hindus predominate. (4) The Deccan with its rivers which have their sources in the Western Ghats.

Each of the four Regions is to have a government of its own, with government institutions of its own, including a legislature, an executive and administration. This means that instead of two sets of Government, as at present, there are to be three sets of Government. The chief merit of the scheme is, according to the writer, that it concedes to the Muslim League the substance of its demand for separation and



establishes "a rough balance between two Hindu-majority and two Muslim-majority Regions," thereby freeing the Muslims from the fear of Hindu domination. Another advantage which the writer claims is from the point of view of the Indian States. While the author concedes the possibility of a separate States' Dominion or Dominions of their own (which was ruled out by Cripps), he is convinced that their safety and prosperity lie in their becoming an intrinsic part of the Regions. Such Regionalism, he says, would "bring the States to the Centre not as a single bloc confronting the Provinces, but already combined with the Provinces in their respective Regions." A further advantage of the scheme says Coupland, is that the approach is economic and social rather than political.

The whole scheme has a family resemblance to that of Dr Benes for the re-drawing of the map of Europe along river basins. The idea is to have something like the Tennessee Valley Authority in the U S A, which exercises jurisdiction over parts of seven States and furnishes a good example of "planning co-operation on a basis of economic regionalism."

The Government contemplated at the Centre is an Agency Centre. It is to be a purely Inter-Regional institution. The members of the executive and legislature would act as agents of their Regions, exercising control over foreign affairs and defence, tariffs and currency. Communications might be added to the list if the Regions agree. The representatives at the Centre would be chosen primarily as representatives of the Provinces and States comprising the regions. Yet, strange as it may seem, Coupland says that the Centre could be a real government, giving its orders to its own soldiers and its officials and not a mere Confederacy. It would pay its own way. The Regions would have an equal representation on the

executive as well. The Prime Minister might be alternately a Hindu and a Moslem. On important issues representatives of a Region would vote 'en bloc' and not as communities or parties. The Supreme Court might be made up of one judge from each Region.

## 2 The Pakistan Scheme.

While the demand for a separate homeland for the Muslims is only a few years old, it assumed a definite shape in a resolution of the Muslim League passed at Lahore on March 26, 1940. It reads

"It is the considered view of this Session that no constitutional plan would be workable in this country or acceptable to the Muslims unless it is designed on the following basic principles, viz that geographically contiguous units are demarcated into regions which should be so constituted, with such territorial adjustments as may be necessary, that the area in which the Muslims are numerically in a majority, as in the North-Western and North-Eastern zones of India, should be grouped to constitute independent State in which the constituent units shall be autonomous and sovereign."

The resolution proceeds to stress that—

"adequate, effective and mandatory safeguards should be specifically provided in the constitution for minorities in these units and in the regions for the protection of their religious, cultural, economic, political, administrative and other rights and interests in consultation with them."

Conversely, it envisages identical guarantees in an identical manner for Muslim minorities in other parts of India.

"This resolution has come to be regarded as something of a Statute of Westminster for Muslims in

India. One of its main defects is its vagueness, which has been a cause of difference of interpretation in the recent Gandhi-Jinnah negotiations. Terms like 'units,' 'regions,' 'areas, zones,' and 'independent States' are used without any attempt at a precise definition of terms."

Partly as an answer to the Lahore resolution, the Indian National Congress passed a resolution in Delhi in March 1942 recognising a diversity inside India's unity and declaring that no territorial unit would be coerced into joining the Indian Union against its will. It further recognised the advisability of creating linguistic provinces

The All-India Congress Committee however at its meeting in May 1942 at Allahabad adopted a resolution moved by Jagat Narain Lal which reads "The A I C C is of opinion that any proposal to disintegrate India by giving liberty to any component state or territorial unit to secede from the Indian Union or Federation will be highly detrimental to the best interests of the people of the different States and Provinces and the country as a whole and the Congress, therefore, cannot agree to any such proposal"

### 3. The Rajagopalachari Scheme

For sometime past Mr. Rajagopalachari, the ex-Prime-Minister of Madras, has been carrying on a vigorous campaign in favour of settlement with the Muslims on the basis of some form of Pakistan. While his efforts received considerable attention, it cannot be said that either the Muslim League or the Congress gave him its blessings. But when it came to be known that Mahatma Gandhi had given his approval to the C. R. formula as early as March 1943,

it began to assume a new importance. The formula as published on July 10, 1944 reads, as follows. —

1. "Subject to the terms set out below as regards the constitution for free India, the Muslim League endorses the Indian demand for independence and will co-operate with the Congress in the formation of a provisional interim government for the transitional period

2. "After the termination of the war a commission shall be appointed for demarcating contiguous districts in the North-West and East of India wherein the Muslim population is in absolute majority. In the areas thus demarcated, a plebiscite of all the inhabitants held on the basis of adult suffrage or other practicable franchise shall ultimately decide the issue of separation from Hindustan. If the majority decides in favour of forming a sovereign state separate from Hindustan, such decision shall be given effect to, without prejudice to the right of districts on the border to choose to join either state

3. "It will be open to all parties to advocate their points of view before the plebiscite is held

4. "In the event of separation, mutual agreements shall be entered into for safeguarding defence and commerce and communications and other essential purposes.

5. "Any transfer of population shall only be on an absolutely voluntary basis.

6. "These terms shall be binding only in case of transfer by Britain of full power and responsibility for the Government of India."

#### 4. Gandhi-Jinnah Negotiations

These negotiations took place in September 1944 at the request of Mahatma Gandhi. Although they lasted for nearly three weeks, no agreement could be reached even on fundamentals. Mahatma Gandhi

proceeded on the basis of the Rajagopalachari formula but this did not satisfy Mr. Jinnah on several points. Hence he put forward an alternative formula of his own which was a simplified form of the Rajagopalachari formula. The assumption of the formula is that Muslim areas in the North-West (Baluchistan, Sind, N W F P and that part of the Punjab where the Muslims are in a majority) and the North-East zone (parts of Bengal and Assam where they are in a majority) want separation from the rest of India.

On the basis of this assumption the following proposals were made —

1. "The areas should be demarcated by commission approved by the Congress and the League. The wishes of the inhabitants of the areas demarcated should be ascertained through the votes of the adult population of the areas or through some equivalent method."

2. "If the vote is in favour of separation, it shall be agreed that these areas shall form a separate State as soon as possible after India is free from foreign domination and can, therefore, be constituted into two sovereign independent States."

3. "There shall be a treaty of separation which should also provide for the efficient and satisfactory administration of Foreign Affairs, Defence, Internal Communications, Customs, Commerce and the like, which must necessarily continue to be matters of common interest between the contracting parties."

4. "The treaty shall also contain terms for safeguarding the rights of minorities in the two States."

5. "Immediately on the acceptance of this agreement by the Congress and the League, the two shall decide upon a common course of action for the attainment of the Independence of India."

6. "The League will however be free to remain

out of any direct action (mass civil disobedience), to which the Congress may resort and in which the League may not be willing to participate."

Mahatma Gandhi claimed that both his formula and that of Mr Rajagopalachari conceded the substance of the Lahore resolution. But Mr Jinnah stoutly opposed this contention. He claimed that C. R. had not only put the Lahore Resolution "out of shape, but mutilated it" and went on to say that "there (was) a close family resemblance between the two (formulae) and the substance of one or the other (was) practically the same, only it (was) put in different language, and that neither (met) the substance nor the essence of Lahore Resolution. On the contrary, both (were) calculated to completely torpedo the Pakistan demand of Muslim India." In the course of the correspondence which accompanied the negotiations, the following points were made clear —

1. While Mahatma Gandhi wanted Independence to precede Pakistan, Mr. Jinnah insisted on the reverse process. The latter claimed that the August Resolution of 1942 was "antimical to the ideas and demands of Muslim India" inasmuch as the Muslim League stood for the independence not of a "United India" for which the August Resolution stood, but for the independence of Pakistan and Hindustan as separate States. Therefore, Mr. Jinnah said that he was not prepared to fight for independence or even for a provincial government till Pakistan was separated from Hindustan as an independent sovereign State. "Ours is a case" he wrote, "of division and carrying out two independent sovereign nations, Hindus and Muslims, and not of secession or secession from any existing union which is non-existent in India." Mr. Jinnah's demand was for agreement on complete separation into Hindustan and Pakistan even before Britain handed over respon-

sibility. Afterwards by united effort they were to "secure the freedom and independence of the peoples of India on the basis of Pakistan and Hindustan."

2. Mr. Jinnah took his stand on "the two-nation theory," which Gandhi was not prepared to concede. He described it as "wholly unreal" and claimed that the mere fact of conversion making the Muslims a separate nation was "a new test of nationhood." "The more I think about the two nations theory the more alarming it appears," said Gandhiji. He further argued that what made Indians a nation was common subjection to a foreign government. If division there must be, he declared, let it be as a partition between brothers.

Mr. Jinnah was equally adamant with regard to his point of view. His consistent claim was that the two-nation theory was not open to question and that the principle of Pakistan had to be accepted by whoever wished to discuss with him the details of a communal settlement. In one of his letters to Gandhi, he wrote "We maintain and hold that Muslims and Hindus are two major nations by any definition or test of a nation." In a highly rhetorical passage which is not particularly noted for its accuracy, he said "we are a nation of a hundred million, and what is more, we are a nation with our distinctive culture and civilisation, language and literature, art and architecture, names and nomenclature, sense of value and proportion, legal laws and moral codes, customs and calendar, history and tradition, aptitudes and ambitions in short, we have our own distinctive outlook on life and of life." By all canons of international law we are a nation." Holding this view, Jinnah held that the Muslims had "an inherent right of self-determination."

3. Sharp difference of opinion arose with regard

to the boundaries of the Muslim Zone. While both the C. R. and Gandhi formulae contemplated contiguous areas where Muslims were in an absolute majority, i.e. had a clear majority over non-Muslim elements, Jinnah, interpreting the Lahore resolution in his own way, claimed practically the whole of the Punjab and Bengal (and possibly Assam) as they exist to-day in addition to areas about which there is no dispute."

Without clearly indicating what areas would constitute Pakistan, Jinnah argued that territorial adjustments in the six Muslim Provinces were to be according to the Lahore Resolution. His contention was that if Gandhi's proposed demarcation were effected, "the present boundaries of these Provinces) (Baluchistan, Sind, North West Frontier Province, Punjab, Bengal and Assam) would be maimed and mutilated beyond redemption, and leave us only with the husk, and it is opposed to the Lahore Resolution."

4. On the question of plebiscite also to decide upon the question of Partition, there were difference of opinion. Both Mahatma Gandhi and G. R. wanted a plebiscite of the entire adult population. Gandhi held that "there must be clear proof that the people affected desire (d) Partition". According to C. R.'s formula, it was to be district-wise. Jinnah was not prepared to concede any plebiscite at all. If there was to be one, it was to be confined to Muslims alone, "they alone", he wrote, "are entitled to exercise this right of theirs for self-determination." This position of his was rather unfortunate. For, if the Muslims are a clear majority and are adamant in having their own Pakistan, there is nothing to be lost by having a universal plebiscite. Further, to compromise the life of a new State with the denial of a fundamental right to the minorities within it disenfranchising them at



the very start is not calculated to inspire their confidence.

5. Mahatma Gandhi contemplated a Provisional Government representing the nation to which power was to be peacefully transferred by the British Government. It was to represent all parties and was to be responsible to the elected members of the present Assembly or newly elected one. It was to give effect to the findings of the Boundaries Commission. The new constitution was to be framed by it or by a special authority set up for the purpose. To all this Mr. Jinnah was unalterably opposed.

6. He was also opposed to the very suggestion of a central agency for Hindustan and Pakistan. Mahatma Gandhi's proposal was for a Central Board of Control or administration for defence, commerce, and the like. In one of his letters he wrote that he would not be a willing party to a division which does not provide for the simultaneous safeguarding of common interests such as Defence, Foreign Affairs and the like. In reply to it Mr. Jinnah said that he did not reject "the idea of common interest between (the) two arms," but that "it will be for the constitution-making body of Pakistan and that of Hindustan, or any other party concerned, to deal with such matters on the footing of their being two independent States." In other words, while, according to Gandhi, some sort of a central agency was to be an integral part of the Treaty enacting separation, according to Jinnah it was for the two sovereign States to set up a common agency after separation, should they feel the need for it. That this was not going to be an easy matter was indicated by Jinnah when he wrote that the matters for the centre mentioned by Gandhi were "the life blood of any State" and could not "be delegated to any central authority or government." In a later

statement, feeling strongly on the subject of some sort of a centre Gandhi remarked "the creation of two completely independent States without some friendly arrangements in regard to certain common interests might mean war to the knife" (an unfortunate phrase for which Jinnah rightly castigated him). He further said "There is no question of one party overbearing the other or the Centre having an overbearing Hindu majority"

7. At one stage Mahatma Gandhi suggested international arbitration, but to that Mr Jinnah was not willing. At another stage he offered to address the League and explain his position. But Jinnah ruled it out on the technical ground that only a delegate could address the meeting of the Assembly, failing to realise that not long ago Mr Churchill, the British Prime Minister, had addressed the American Congress

8. At an earlier stage in the negotiation Mahatma Gandhi wanted satisfaction from Mr Jinnah that a number of independent sovereign States "will not become a collection of poor States, a menace to themselves and the rest of India," expressing his own fear that as he visualised the working of the Lahore Resolution, he saw "nothing but ruin for the whole of India". On this question no satisfaction was forthcoming. To the other fear that Pakistan when set up might join hands with neighbouring Muslim states against Hindustan, the only consolation with Jinnah offered was that "Pan-Islam (was) only a bogey." Neither did he take up the question of how the two "units of Pakistan" were to be linked together.

9. It is noticeable that throughout the negotiations the questions of Indian India or Princely India, was left out of account. Whether they were to become a part and parcel of Hindustan or Pakistan as the case

may be or were to be federated with one or the other of them was not even considered. Likewise, the autonomy of closely knit and powerful minorities like the Sikhs did not play any part at all.

10. In conclusion Mahatma Gandhi went so far as to say "My experience of the precious three weeks confirms me in the view that the presence of a third power hinders the solution"

On the eve of the negotiations, Lord Wavell issued a statement on August 15th reiterating the position taken by the British Government in 1942. The main points of the statement were

1. The offer of unqualified freedom after the cessation of hostilities was conditional upon the framing of a constitution agreed to by the main elements of Indian national life and the negotiation of the necessary treaty arrangement with His Majesty's government

2 No "National Government" responsible to the central Assembly was feasible during the war Wavell added that during war military functions could not be divided from other functions and that until hostilities ceased and the constitution was in operation His Majesty's Government and the Governor-General must retain their responsibility over the entire field.

3 His Majesty's Government had the duty of safeguarding the interests of racial and religious minorities and of the Depressed Classes and their treaty obligations to the Indian States.

4. "If however, the leaders of the Hindus, the Muslims and the important minorities were willing to co-operate in a transitional government established and working within the present constitution, I believe good progress might be made. For such a transitional government to succeed there must be before it is formed, agreement in principle between Hindus and Muslims

and all important elements as to the method by which the new constitution should be framed. This agreement is a matter for Indians themselves."

## CHAPTER XXVI

### IMPORTANT WORLD CONSTITUTIONS

*"Nothing increases the pace and movements of public opinion more than a Great War"*

*Prime Minister Attlee.*

#### 1. Constitution (Basic Law) of the Union of Soviet Socialist Republics ? 1936

##### Social Organization

Article 1 The Union of Soviet Socialist Republics is a Socialist state of workers and peasants

Article 4 The economic foundation of the U. S. S. R. consists in the socialist system of economy and socialist ownership of the implement and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of private ownership of the instruments and means of production, and the abolition of exploitation of man by man

Article 5 Socialist ownership in the U. S. S. R. has either the form of State ownership (public property) or the form of Co-operative and collective farm ownership (property of individual collective farms, property of co-operative associations)

Article 9. Alongside the socialist system of economy, which is the dominant form of economy in the U. S. S. R. the law allows small private economy of individual peasants and handicraftsmen based on

individual labour and excluding the exploitation of the labour of others

Article 10. The personal ownership by citizens of their income from work and savings, home and auxiliary household economy, of objects of domestic and household economy as well as objects of personal use and comfort are protected by law

### State Organization

Article 13 The Union of Soviet Socialist Republics is a federal State, formed on the basis of the voluntary association of the Soviet Socialist Republics with equal rights

Article 14 The Jurisdiction of the Union of Soviet Socialist Republics, as represented by its supreme organs of power and organs of State administration, extends to —

(a) Representation of the Union in international relations conclusion and ratification of treaties with other States.

(b) Questions of war and peace.

(c) Admission of new republics in to the U S S R.

(d) Control of the observance of the Constitution of the U S S. R. and ensuring conformity of the Constitutions of the Union republics with the Constitution of the U S S. R.

(e) Approval of alterations of boundaries between Union republics

(f) Organisation of the defence of the U. S. S. R. and the direction of all the armed forces, of the U S S. R.

(g) Foreign trade on the basis of the State monopoly.

(h) Protection of State security.

(i) Establishment of the national economic plans of the U. S. S. R.

(j) Approval of the unified State budget of the U. S. S. R. as well as the taxes and revenues entering into the U. S. S. R. Union republic and local budgets.

(k) Administration of banks, industrial and agricultural establishments as well as trading enterprises of all Union importance

(l) Administration of transport and means of communication.

(m) Direction of the monetary and credit system.

(n) Organization of the State insurance of property.

(o) Contracting and granting of loans.

(p) Establishment of the fundamental principles for the use of land as well as the exploitation of deposits, forests and waters

(q) Establishment of the fundamental principles in the field of education and protection of public health.

(r) Organization of a unified system of national economic accounting

(s) Establishment of basic labour laws.

(t) Legislation on Judicature and legal procedure, criminal and civil codes.

(u) Laws on citizenship of Union: laws on the rights of foreigners.

(v) Passing all Union amnesty acts.

Basic Rights and Obligations of Citizens

Article 118 Citizens of the U. S. S. R. have the right to receive guaranteed work with payment for their work in accordance with its quantity and quality.

The right to work is ensured by the socialist organization of national economy; the steady growth of the productive forces of Soviet society; the absence of economic crises, and the abolition of unemployment.

Article 122. Women in the U. S. S. R. are accorded equal rights with men in all fields of economic, State, cultural, social and political life.

The possibility of realizing these rights of women is ensured by affording women equally with men the right to work, payment for work rest, social insurance and education State protection of the interests of mother and child, granting pregnancy leave with pay, and the provision of a wide network of maternity homes, nurseries and kindergartens

Article 123 The equality of the right of citizens of the U. S. S. R. irrespective of their nationality or race, in all fields of economic State, cultural, social and political life is an irrevocable law

Any direct or indirect restriction of these rights conversely the establishment of direct or indirect privileges for citizens on account of the race of nationality to which they belong, as well as any propagation of racial or national exceptionalism and hatred and contempt, is punishable law.

Article 124 To ensure to citizens freedom of conscience the church in the U. S. S. R. is separated from the State and the school from the church. Freedom to perform religious rites and freedom of anti-religious propaganda is recognized for all citizens

Article 125 In accordance with the interest of the toilers,, for the purpose of strengthening the socialist system, the citizens of the U. S. S. R. are guaranteed,—

(a) Freedom of speech

(b) Freedom of the Press.

(c) Freedom of assembly and meetings.

(d) Freedom of street processions and demonstrations.

These rights of the citizens are ensured by placing at the disposal of the toilers and their organiza-

tions printing presses, supplies of paper, public buildings streets, means of communication and other material conditions necessary for their realization.

Article 126. In accordance with the interests of the toilers and for the purpose of developing the organizational self-expression and political activity of the masses of the people, citizens of the U. S. S. R. are ensured the right of combining in public organizations, trade unions co-operative associations, youth organizations sport and defence organizations, cultural technical and scientific societies, and for the most active and conscientious citizens form the ranks of the working class and other strata of the toilers of uniting in the Communist Party of the U. S. S. R. which is the vanguard of the toilers in their struggle for strengthening and developing the socialist system and which represents the leading nucleus of all organizations of the toilers both public and state

## 2. Declaration of the Irish Republic January 21, 1919.

Whereas the Irish people is a free people

And whereas for seven hundred years the Irish people has never ceased to repudiate and has repeatedly protested in arms against foreign usurpation

And whereas English rule in this country is and always has been, based upon force and fraud and maintained by military occupation against the declared will of the people

And whereas the Irish Republic was proclaimed in Dublin on Easter Monday, 1916, by the Irish Republican Army, acting on behalf of the Irish people,  
And whereas the Irish people is resolved to secure and maintain its complete independence in order to promote the common weal, to re-establish justice, to provide for future defence, to insure peace at home



and goodwill with all nations, and to constitute a national policy based upon the people's will, with equal opportunity for every citizen

And whereas at the threshold a new era in history the Irish electorate has in the general election of December, 1918, seized the first occasion to declare by an overwhelming majority its firm allegiance to the Irish Republic

Now therefore, we, the elected representatives of the ancient people, in National Parliament assembled, do, in the name of the Irish nation, ratify the establishment of the Irish Republic, and pledge ourselves and our people to make this declaration effective by every means at our command.

To ordain that the elected representatives of the Irish people alone have power to make laws binding on the people of Ireland, and that the Irish Parliament is the only Parliament to which the people will give it allegiance

We solemnly declare foreign government in Ireland to be an invasion of our national right, which we will never tolerate and we demand the evacuation of our country by the English garrison

We claim for our national independence the recognition and support of every free nation of the world, and we proclaim that independence to be a condition precedent to international peace hereafter.

In the name of the Irish people we humbly commit our destiny to almighty God who gave our forefathers the courage and determination to persevere through centuries of ruthless tyranny, and strong in the justice of our cause which they have handed down to us, we ask His divine blessing on this the last stage of the struggle which we have pledged ourselves to carry through to freedom

## PART V

# GENERAL

### CHAPTER XXVII

### THE INDIAN STATES.

*"Paramountcy, whatever it is or may be, is quite outside the question of Federation, and remains where it was, with the Crown, and the Crown's Governor-General, and no where else"* — Sir Samuel Hoare

#### 1. Origin of Indian States.

A study of the Indian system of government however brief, would be incomplete without some account of the Indian states which under new conditions will take active part in the politics of the country. Indian states, as we know them at present, did not originate until the days of Lord Wellesley. In early days the East Indian Company had no doubt entered into relations with the princes in India but their position at the court of those states was hardly superior to that of a merchant body. The Subsidiary Alliance of Lord Wellesley laid the foundation of the modern protected states in India. By this alliance they were required to maintain at their cost a considerable British Army. They surrendered their foreign policy to the Company and stipulated that they would entertain no European in service without the consent of the Company. The prince with whom such a treaty was concluded had also to leave his disputes with and claims upon his neighbours to the arbitration of

the English. The Company in return guaranteed to the princes their title to the throne and protected them from external aggression. Lord Hardings carried the policy of Lord Wellesley a step further and while arranging treaties with the native princes made it clear to them that the obligations of an alliance with the Company included a reasonable measure of decent government within a prince's own dominion and many states were late annexed on this ground

## 2. Characteristics of Indian States.

The Indian states are in all 562 in number and their area and population are about one-third and one-fourth respectively of that of the whole of India. Their total population is about 9 crores against 30 crores of British India excluding Burma, and consist of 78% Hindus, 13% Muhammadans, 3% Christian, 3% tribal religions, 10% Sikhs and 1% Jains. They include states of varying size and population. The biggest of them Hyderabad has an area of about 82,700 sqr miles and a population of over 16 millions as Italy. In other words it is as large as Great Britain and has nearly twice the number of inhabitants of Portugal or Austria. Its revenue is over 14 crores of rupees.

Kashmir State, in the extreme north, is of approximately equal size and has a population of over 4 millions. Mysore, in the south, has 7 millions of inhabitants, with an area of just under 30,000 sqr. miles, so that it is larger than the Irish Free State and twice its population. Further south are two densely populated states of Travancore and Cochin, with over 4 millions and one million inhabitants respectively. The territory of the Gaekwar of Baroda, which is made up of several separated areas north of Bombay, includes a population of over 3 millions.

Other big states are those of Gawalior, Jaipur, Jodhpur, Patiala and Indore which are each equal to small countries outside India. On the other hand there are small states like Lawa, in Rajputana with an area of 19 miles and the Simla Hill States which are little more than small holdings. The Indian States Committee which was appointed in 1927 classified the Indian states shown in the following table.—

Class of State, Estate, etc	Num- ber	Area in square Miles	Population	Revenue in crores of Rupees
1 States the rulers of which are members of the Chamber of Princes in their own right	108	514,886	59,847,186	42.16
2 States the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves	127	76,846	8,004,114	2.89
3 States, Jagirs and others	327	6,406	801,674	74

### 3 Internal Government.

The internal government of different states varies considerably. About 40 of these have instituted legislative councils invariably of a consultative nature. Forty have established High Courts more or less based on British Indian model. Thirty-four claim to have separated executive from judicial functions. There are also many diversities in the social and economic conditions of these states, and varying degrees of administrative efficiency, educational progress and political development. Their adminis-

tration is borrowed from the adjoining provinces and many of the retired officers from provinces are engaged there to reorganise various departments. They have their own police and a limited number of troops

Each state manages its own internal affairs by making and administering its own laws, and imposing, collecting and spending its own taxes. In spite of legislative councils in some states the "authority of the ruling chief is full and complete both in respect of legislation and taxation and the distinction between the civil list and the state revenue is mostly at the direction of the Chief." Courts are also under his control.

### 1. Relations with Paramount Power.

The relations between the Indian States and the paramount power are determined by treaties or other written documents, or usage or agreement but the Crown is in all cases responsible for the states, external relations and for its territorial integrity. The subsidiary alliance as described in the earlier part of this chapter governs almost all the states. There are about 40 states, all of major importance, which have actual treaties with the paramount power. A large number of them have some form of 'engagment' or 'Sardar', i.e. a concession or acknowledgment of authority or privilege, generally coupled with conditions from paramount power. Others enjoy in some form or other recognition of their status by the Crown.

But "no State has jurisdiction over European British subjects and foreigners who are subjects to the jurisdiction of the Residents or of British Indian Courts, and jurisdiction is ceded over military stations and cantonments, civil stations and some Railway lands."

The Governor-General as the representative of the Crown exercises control over the states. But this control is mostly through an agent, in immediate

political relations with the Government of India are Hyderabad, Mysore, Baroda, Kashmir and Gwalior. The agent of the Governor-General in Beluchistan is concerned with relations with Kalat and Las Bela. The Central India Agency whose Agent resides at Indore with political Agents in Bhopal, Bundelkhand and Malwa includes 28 salute states and 69 non-salute states. The Deccan States Agency was created in 1933 by detaching the states controlled by the Bombay Government. The Agent is the Resident at Kolhapur and there are 16 other smaller states. The Eastern States Agency was also created in 1933 by detaching the states with Central Provinces, Bihâr and Orissa. The Agent resides at Ranchi with a Secretary and political agent at Sambalpur. In the same year Gujrat States Agency with 11 big and 70 small states was created. The Madras States Agency was created as old as 1923 and the Punjab States Agency in 1921. The Rajputana States Agency has its headquarter at Mount Abu where the Agent resides. Bikaner and Sirohi are directly under him. Twenty others fall under the Agent at Jaipur. The Western India Agency was created in 1924 to look after the States of Kathiawar, Cutch and Palanpur, Mahi Kanta Agency being added in 1933. Besides these some of the states remain in direct relations with the local Government. Assam is connected with Manipur and 16 other small states. Bengal has the states of Gooch Bihar and Tripura. Punjab is connected with 18 Simla States, and United Provinces with Rampur Benares and Garhwal.

Intervention by paramount power in internal affairs is resorted to in case of gross misgovernment. The paramount power is responsible for the integrity of the state and to preserve the dynasty. On the other hand the states have no foreign policy, and no international existence. They have no separate representation in the

League of Nations and the Indian representative at Geneva and other international bodies are supposed to be representatives of India as a whole. They cannot receive any diplomatic agent from any foreign power. The subject of an Indian State cannot obtain passport from his prince for foreign travel, and in foreign countries they are all regarded as British subjects for all practical purposes. Amongst themselves all disputes are referred to arbitration of the paramount power. In all inter-state questions, e.g. boundary disputes or mutual extradition of criminals, or the inter-state Railway line, the paramount power arranges the matters.

### 5. Incidents of State Governments.

A certain number of States pay tribute, varying in amount, to the Crown, which is credited into the revenues of the Government of India. The tribute has sometimes risen from the terms on which territory was exchanged or restored or from settlement of claims between governments but in many cases it is in lieu of former obligations to supply or maintain troops. In some cases tribute is paid by some subordinate state to a larger state e.g., a number of states in Kathiawar and Saurashtra pay tribute to Baroda, and Gwalior claims tribute from some of the smaller states of central India.

Most of the inland states impose their own import and export duties at their boundaries. Mysore is however an exception. The import and export duties in many states yield revenue, second only to land revenue. Many states which have no sea-ports claim to share with the Government of India the revenue derived from customs. Some states have also their own railways but in most cases arrangements have been made between the Crown and the states by which the Government of India have secured special jurisdiction

over territories of those states which are taken up for railway purposes

As regards Posts and Telegraphs, the British Telegraph system, by agreement, extends everywhere. In most cases similar agreements exist for the service of the British Post in Indian states, but fifteen States have their own postal departments and five of these have conventions by which they work in co-operation with the British Posts. There are only eight states which mint their own rupee currency. In the rest, the mints are only worked for copper coinage or for striking silver or gold coins on special ceremonial occasions

## 6. The Chamber of Princes

Events have tended gradually to draw the Indian states into closer harmony with each other as also with the paramount power. The colleges at Ajmer, Rajkot, Indor etc afford opportunities for association of the sons of the ruling chiefs. On the other hand the Chamber of Princes which was set up by Royal Proclamation on 8th February, 1921 created more opportunities for the conference amongst the ruling princes themselves. The Chamber of Princes is a deliberative, consultative and advisory, but not an executive body. It is meant to see that the treaty rights and obligations are mutually and duly observed and enforced. The Chamber of Princes consists in the first place, of 108 rulers of states who are members in their own right. In the second place the Chamber includes 12 additional members elected by the rulers of 127 other states not included in the above. The Chamber meets every year in the magnificent Council House at Delhi. The Viceroy is the president of the Chamber and a Chancellor and Pro-chancellor are elected from amongst the members



annually An important organ of the Chamber is the standing committee which consists of 7 members including the Chancellor and the Pro-chancellor The functions of the standing committee are to advise the Viceroy on questions referred to the committee by him

## 7. States Under the New Constitution

Under the Act the States are allowed the option to accede to the Federation Whether or not the majority of States enter Federation in due course, the relations of the States and the Crown must necessarily remain of great importance The scheme of Federation indeed demands that the States should surrender sufficient autonomy to make the Federation a real one With the inclusion of States into Federation there is apt to be a tendency towards reforms "a representative assembly as advisory or consultative body for passing legislation, a system of law based on modern principles, an impartial judiciary, efficient civil service and various other reformatory movements."

Other details, regarding their inclusion in the Federation have already been described in Chapter IV.

## 8. Nepal, Bhutan and Afghanistan.

The British Government has also relations with the States on the borders of India These are three, Nepal, Bhutan and Afghanistan. But they are not Indian States and are not subordinate to the British Government

The small hilly independent kingdom of Nepal is a narrow tract of country of about 520 miles along the southern slope in the central part of the Himalayas It has an area of about 56,000 sq. miles with a population of about 5,580,000 chiefly Hindus and an annual revenue collected mostly from land, forest and

customs amounts to about £1,000,000 It has an army of about 45,000 Most part of the country is mountainous Till the later half of the 18th century was split up into several small kingdoms, when the Gurkhas under Prithvi Narayan Shah overran and conquered the different kingdoms Since then Nepal is one consolidated Kingdom. In 1846 the head of the Rana family Maharaja Jung Bahadur Rana obtained from the sovereign the perpetual right to the office of prime minister which his family still enjoys.

The relations of Nepal with the Government of India are governed by the treaty of 1816 and subsequent agreement by which a representative of the British Government is received at Kathmandu. The friendly relations with the British Government have steadily been maintained and to further strengthen and cement the bonds of friendship that have subsisted so long between the two countries, a "new treaty of friendship was concluded between the Government of Nepal and Great Britain in 1923 and Nepal which was till then restricted in matters of external sovereignty was made completely independent externally as well as internally and all the restrictions on the employment of Europeans or Americans were withdrawn" Nepal was also allowed to import munitions of war so long as she remained friendly with the Crown. The British Resident was withdrawn and an Envoy was appointed in his place. In 1934 a Nepalese legation was opened in London. The Government is monarchy Slavery was abolished and 60,000 slaves were set free. Kathmandu, its capital was connected by telephone with India. A large number of Gurkhas serve in British Army.

Bhutan which is very near to Nepal, is not so independent. Since 1863 when portions of its territory were annexed, it has been in receipt of a grant

from India fixed in 1910 at £6,677 a year while it had undertaken to be guided in its foreign relations by British advice. A hereditary Maharaja was installed in 1907 replacing the joint control by a spiritual and temporal chief. Bhutan has an area of 1,8000 sq. miles and its population consisting of Buddhists and Hindus, has been estimated at 300,000.

Afghanistan has continuous relations with the Government of India for a number of years which need not be related in this short space. Suffice to say that the position of Afghanistan is internationally of importance. It has always been the gate-way to India. It has a population of about 6,380 000. "Afghanistan was recognised as falling within British sphere of influence as late as 1919 but in that year it was declared as independent internationally."

\* Between the North-West Frontier Province and Afghanistan lies a portion of one of the highest and most rugged mountain system of the world. This frontier has long presented and still presents both an international and local problem of enormous complexity and difficulty. This area is full of Pathan tribesmen split up in remarkable way in their various territories—Wazirs, Mahsuds, Bannuchis, Afridi, Shinwaris, Mahamands and so on—and under their respective maliks are constantly at feud amongst themselves. This tribal area is estimated to have a population over 30 lakhs as against only 25 lakhs in the North-West Frontier Province. This part of the country although not direct, under British administration forms a sphere of British influence to certain extent, justice is administered through the traditional indigenous tribunals called *jirgas*.

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## CHAPTER XXVIII BRITISH BURMA

*"Enmity never comes to an end through enmity here below, it comes to an end through non-enmity. This has been the rule for eternity"—Dharmapad*

### 1 Growth of the Burman Constitution.

The Government of India Act 1935 separates Burma, the largest province from the rest of India. It is now to be governed as an individual territory under its own constitution, the Government of Burma Act 1935.

Burma covers in all 261,000 sq. miles of which 192,000 sq. miles is under direct British administration 7,000 sq. miles is unadministered, and 6,200 sq. miles consists of states of semi-independent nature. There is also Assigned Tract of Namwan held on perpetual lease from China in order to facilitate frontier transit questions. The total population of Burma is over 14 millions out of which about 11 millions are Burmans and the rest are either Indians, Chinese or others. In religion Burma differs greatly from India, for 12,348,037 of the people are Buddhists; 584,839 Muslims, 331,106 Christians, and the remaining include 570,953 Hindus 10,907 Sikhs and 721 Jains. The total sea-borne trade of Burma amounts to about £63,000,000. Burman's annual revenue is about £6,000,000. The language of the people is Burmese or Shangan. About three-fifths of the country is forest from which quantities of teak are exported.

The British connection with Burma began in the middle of the 17th century when private merchants

established themselves at Rangoon to develop the teak and lac trade. But the relations between these merchants and the Burman Government were not cordial and there were frequent of unpleasant events on the frontiers of Burma. The seizure of the British Island of Shahpuri on the Arakan coast by the Burmese Government culminated in the First Burmese War which resulted in the peace of Yandabo by which Arakan, Tenasserim, Upper Assam, Cochar, Jaintia and Manipur were added to British territory. By a second Burmese War the province of Pegu was annexed to British territory in 1852 and the portions so acquired were placed under a Chief Commissioner in 1862. In 1879 there were again some strained relations between the British merchants and the Burman Government. This led to the 3rd Burmese War in 1885 by which Upper Burma was also annexed. In 1897 Upper Burma and Lower Burma were united into a single Province and were placed under a Lieutenant Governor. In the same year Burma was given a Legislative Council. In the Minto-Morley Reforms this Legislative Council was to have upto 30 members and its proceedings were conducted in the same manner as those of other provinces. Burma was not included in the Montague-Chelmsford Reforms, which led to great dissatisfaction amongst the Burmese. In 1921 therefore a small committee presided over by Sir Fredrick Whyte visited Burma and Burma was created a Governor's province in 1923 with a Legislative Council of 103 members and a system of dyarchical government analogous to that prevailing in other provinces of India was introduced.

## 2. Burma under the new Constitution.

The Statutory Commission recommended the seve-

rence of Burma from the rest of India on account of its distinctly different geographical, ethical, religious and social environments. The British Government shared these views, and Burma was separated from the rest of India by the Government of India Act 1935. Its constitution is modelled on the constitution of Federal India. Burma is now to be governed by a Governor, who is normally to act on the advice of his ministers not exceeding 10 in number. In matters of defence, external relations, ecclesiastical affairs, monetary policy, currency and coinage, the Shan States and similar areas, and areas which do not form part of British territory, the Governor is to act in his discretion with the help of three counsellors. The special responsibilities of the Governor are the same as those in the case of Governor-General of Federal India. He may also appoint a financial Adviser and an Advocate-General and is required to exercise the same powers in respect of police rules, the prevention of crimes of violence and the prevention of leakage of certain informations as in the provinces of India.

### 3. Burman Legislature.

The legislature of Burma consists of a Governor, a Senate whose life is 9 years and a House of Representatives whose life is 5 years. The Senate is to have 36 members, half of which are to be nominated by the lower house on the system of proportional representation. A high property qualification is required in the case of Senators. The House of Representatives is to consist of 132 members and all its members are to be elected. It is estimated that over 23 per cent of the population would be enfranchised. The probable number of male voters is 2,000,000 and those of female 700,000. There are 91 non-commu-

hal seats, 12 Karen seats, 8 Indians, 2 Anglo-Burman, 3 European Seats, 11 for the representation of commerce and Industry, 1 for the University, and two each for Indian and non-Indian labour Matters regarding qualifications of members, privileges, rules of procedure and other questions are regulated as in India. The powers of Senate are very similar to those of Legislative Councils in India. The previous sanction of the Governor extends to the same matters as in the case of Governor-General, so far as they are applicable to Burma, but there is added immigration legislation. The Governor's prior sanction is also required in certain defined cases. Differences between the views of the two houses are solved after 12 months, normally by Joint sittings. The Bills passed by the Burmese Legislature may be assented to, reserved or refused assent. As in the case of India the Governor has the power of making ordinances and may also enact permanent acts when necessary. Moreover he can also make regulations for the scheduled areas. He can also assume responsibility to himself of the whole-administration in case the Constitutional machinery fails subject to the approval of Parliament.

#### 4. Administrative Provisions.

Financial provisions follow Indian model except that the lower house only has authority to assent to the grants. Governor has the same power of restoring grants as in India. Audit is entrusted to Auditor General. Provision is also made for Burman Railway Board and a Rates Committee may be appointed but there is no tribunal for Burma as the issues involved in India do not arise for Burma. The High Court is also similar to that in an Indian Province. Services are similarly safeguarded

while the Secretary of State is authorised to select officers for the Burma Civil Service Class I, the Burma Medical Civil Service, and the Burma police Class I. The Burma Frontier Service parallel to Indian Political Service, is under the Governor's control. There is also provision for the Burma Public Service Commission similar to that of India.

With a view to avoid disturbance in trade relations, power is given to the Crown in Council to regulate the duties to be imposed on goods exported from or into Burma or India. Maintenance of *status quo* for 3 years is arranged. The financial relations between Burma and India have already been determined by a Commission whose report has been published. The Secretary of State is to be advised by not more than 3 advisers similar to those of India.

The native states are unknown to Burma but exceptional position is occupied by the Federated Shan States, which are British territories but which are governed by their own chiefs with full powers. They fall within the discretionary powers of the Governor and until otherwise directed by the King in Council he will continue to control the federal fund of this state.

The separation of Burma from the rest of India naturally arises the question of allocation of debt. An advisory tribunal recommended that as a general principle the proper ratio in which Burma is to contribute should be 75 per cent. The King in Council will fix this ratio as he may think fit.

There is however no general power to amend the constitution. But similar provisions have been made as in the case of India. Thus after 10 years amendments may be asked for by the Burman Legislature regarding the composition of the legislature, or the method of choosing or the qualification of members



or franchise. As in India provision is made for the suspension of the constitution in the event of deadlock. The King in Council will fix the date of the operation of the new constitution under the Act.

Burma was overrun by Japanese in 1942 but in 1945 the British again reoccupied it

## APPENDIX I LEGISLATIVE LISTS

### LIST I

#### Federal Legislative List

1 His Majesty's, naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment, central intelligence bureau, preventive detention in British India for reason of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States 2 Naval, military and air force works, local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas, and, within British India, the delimitation of such areas 3. External affairs, the implementing of treaties and agreements with other countries, extradition, including the surrender of criminals and accused persons to parts of His Majesty's dominions outside India. 4. Ecclesiastical

affairs, including European cemeteries 5. Currency coinage and legal tender 6. Public debt of the Federation 7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication Post Office Savings Bank 8. Federal Public Services and Federal Public Service Commission. 9. Federal pensions that is to say, pensions payable by the Federation or out of Federal revenues. 10. Works, lands and buildings vested in or in the possession of His Majesty, for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement. 11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation 12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies 13. The Benares Hindu University and the Aligarh Muslim University 14. The Surveys of India, the Geological, Botanical and Zoological Surveys of India, Federal meteorological organisations. 15. Ancient and historical monuments archaeological sites and remains. 16. Census. 17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated state, or British Subject domiciled in the United Kingdom, pilgrimages to places beyond India. 18. Port quarantine, seamen and marine hospitals, and hospitals connected

with port-quarantine. 19. Import and export across customs frontiers as defined by the Federal Government. 20. Federal railways, the regulation of all railways other than minor railways in respect of safety, maximum and minimum rates and fares, station and service terminal charges, interchange of traffic and the responsibility of railway administrations as carriers of goods and passengers the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers, the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers. 21. Maritime shipping and navigation, including shipping and navigation on tidal waters Admiralty jurisdiction. 22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein. 23. Fishing and fisheries beyond territorial waters. 24. Aircraft and air navigation the provision of aerodromes regulation and organisation of air traffic and of aerodromes. 25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft. 26. Carriage of passengers and goods by sea or by air. 27. Copyright, inventions, designs, trademarks and merchandise marks. 28. Cheques, bills of exchange, promissory notes and other like instrument. 29. Arms firearms ammunition. 30. Explosives. 31. Opium, so far as regards cultivation and manufacture, or sale for export. 32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport. 33. Corporations, that is to say, the incorporation, regulation and winding-up of trading corporations, including banking, insurance, and

financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit 34 Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest 35 Regulation of labour and safety in mines and oilfields 36 Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest 37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State, Government insurance, except so far undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.

38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or Chief Commissioner, as the case may be, extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to

the provisions of this Act and of any Order in Council made thereunder

41 The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly the salaries, allowances and privileges of the members of the Federal Legislature and to such extent as is expressly authorised by Part II of this Act, the punishment or persons who refuse to give evidence or produce documents before Committees of the Legislature

42 Offences against laws with respect to any of the matters in this list

43 Inquiries and statistics for the purposes of any of the matters in this list

44 Duties of customs, including export duties

45 Duties of excise on tobacco and other goods manufactured or produced in India except—

(a) alcoholic liquors for human consumption

(b) opium, Indian hemp and other narcotic drugs and narcotics, non-narcotic drugs,

(c) medical and toilet preparations containing alcohol, or any substance included in sub-paragraph

(d) of this entry

46 Corporation tax.

47 Salt.

48 State lotteries

49 Naturalisation

50 Migration within India from or into a Governor's Province or a Chief Commissioner's Province

51 Establishment of standards of weight

52 Ranchi European Mental Hospital.

53 Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and to such extent as is expressly authorised by Part IX of this Act, the enlargement of the

appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers

54. Taxes on income other than agricultural income

[54A. The matters specified in the proviso to subsection of section one hundred and forty-two A of this Act as matters with respect to which provision may be made by laws of the Federal Legislature]

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individual and companies, taxes on the capital of companies

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air, taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court

## List II.—Provincial Legislative List.

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power), the administration of justice, constitution, and organisation of all courts, except the Federal Court, and fees taken thereon, preventive detention for reasons connected with the maintenance of public order, persons subjected to each detention.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters

in this list procedure in Rent and Revenue Courts.

3. Police, including railway and village police.

4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein, arrangements with other units for the use of prisons and other institutions

5. Public debt of the Province

6. Provincial Public Services and Provincial Public Service Commissions

7. Provincial pensions, that is to say, pensions payable by the Province or out of Provincial revenues.

8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province

9. Compulsory acquisition of land

10. Libraries, museums and other similar institutions controlled or financed by the Province

11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

12. The salaries of the Provincial Ministers, of the Speaker, and Deputy Speaker of the Legislative Assembly, and, if there is a Legislative Council, of the President and Deputy and President thereof, the salaries, allowances and privileges of the members of the Provincial Legislature and to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature

13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

14 Public health and sanitation, hospitals and dispensaries registration of births and deaths

15 Pilgrimages, other than pilgrimages to places beyond India.

16 Burials and burial grounds.

[17 Education including Universities other than those specified in paragraph 13 of List I ]

• 18 Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in List I minor railways subject to the provisions of List I with respect to such railways, municipal tramways, ropeways, inland waterways and traffic thereon subject to the provisions of List III with regard to such waterways ports subject to the provisions in List I with regard to major ports vehicles other than mechanically propelled vehicles

19 Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power

20 Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases, improvement of stocks and prevention of animal diseases, veterinary training and practice, pounds and the prevention of cattle trespass.

21 Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents, transfer, alienation and devolution of agricultural land, land improvement and agricultural loans, colonization, Courts of Wards encumbered and attached estates, treasure trove

• 22. Forests.

• 23. Regulation of mines and oil fields and mineral development subject to the provisions of List I with

1 Subst. by the India and, Burma (Miscellaneous Amendments) Act 1940 (8 & 4 Geo. 6, c. 5) (with effect from 1st April 1940)



respect to regulation and development under Federal control.

- 24 Fisheries
- 25. Protection of wild birds and animals.
- 26 Gas and gasworks
- 27 Trade and commerce within the Province, markets and fairs, money lending and money lenders
- 28. Inns and innkeepers
- 29 Production, supply and distribution of goods development of industries, subject to the provisions in List I with respect to the development of certain industries under Federal control
- 30 Acculturation of foodstuffs and other goods weights and measures

31 Intoxicating liquors and narcotic drugs, that is, to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III

32 Relief of the poor unemployment.

33. The incorporation, regulation, and winding-up of corporations [not being corporations specified in List I University] unincorporated trading, literary, scientific, religious and other societies and associations co-operative societies

34 Charities and charitable institutions, charitable and religious endowments

35. Theatres, dramatic performances and cinemas, but not including the sanctioning of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38 Inquiries and statistics for the purpose of any of the matters in this list.

39 Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption

(b) opium, Indian hemp and other narcotic drugs and narcotics non-narcotic drugs

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry

41 Taxes on agricultural income

42. Taxes on lands and buildings, hearths and windows

43 Duties in respect of succession to agricultural land

44 Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45 Capitation taxes.

46. Taxes on professions, trades, callings and employments, subject, however, to the provisions of section one hundred and forty-two of this Act.

47. Taxes on animals and boats

48. Taxes on the sale of goods and on advertisements.

48A. Taxes on vehicles suitable for use on

1 Subst. s. 2, 197d

2 Ins. s. 3. 197d